



Amendment No. 5  
of  
Contract No. NR150000002  
for  
Total Management of Dispatch, Towing and Impound Services  
between  
TEGSCO, LLC (DBA AutoReturn)  
and the  
City of Austin

1.0 The City hereby exercises the extension option for the subject contract. This extension option will be effective August 10, 2020 to August 9, 2021. Zero options remain.

2.0 The total contract authorization is recapped below:

Term	Contract Amount for the Item	Total Contract Amount
Basic Term: 08/10/2015 – 08/09/2018	\$0.00	\$0.00
Amendment No. 1: Amend Provision in Section 0400 11/03/2015	\$0.00	\$0.00
Amendment No. 2: Amend Provisions in Exhibit A and Correct Dates of Basic Term to 08/10/2015 – 08/09/2018 11/28/2016	\$0.00	\$0.00
Amendment No. 3: Option 1 - Extension 08/10/2018 – 08/09/2019	\$0.00	\$0.00
Amendment No. 4: Amend Provisions in Scope of Work Option 2 - Extension 08/10/2019 – 08/09/2020	\$0.00	\$0.00
Amendment No. 5: Option 3 - Extension 08/10/2020 – 08/09/2021	\$0.00	\$0.00

3.0 MBE/WBE goals do not apply to this contract.

4.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature:

Handwritten signature of Raymond E. Krouse.

Printed Name: Raymond Krouse

TEGSCO, LLC (DBA AutoReturn)  
450 7<sup>th</sup> Street  
San Francisco, CA 94103

Signature:

Cindy Reyes

Digitally signed by Cindy  
Reyes  
Date: 2020.08.04  
13:04:48 -05'00'

Cindy Reyes  
Contract Management Specialist III  
City of Austin  
Purchasing Office



Amendment No. 4  
of  
Contract No. NR150000002  
for  
Total Management of Dispatch, Towing and Impound Services  
between  
TEGSCO, LLC (DBA AutoReturn)  
and the  
City of Austin

- 1.0 The City hereby exercises the extension option for the subject contract. This extension option will be effective August 10, 2019 to August 9, 2020. One option remains.
- 2.0 The City hereby amends the above referenced contract to make the following changes:
- 2.1 Remove the following to Exhibit A, Contract Scope of Work as Paragraph 9.J.  
"The APD Vehicle Processing Facility under this Contract are located at 8200 South Congress Avenue, Austin, TX 78745."
- 2.2 Revise Exhibit A, Contract Scope of Work Paragraph 9.0.F. to add:  
"9.0.F. 17. Any location proposed by the Contractor will require approval by APD personnel, including Forensic Support Services personnel prior to acceptance."
- 3.0 The total contract authorization is recapped below:

Term	Contract Amount for the Item	Total Contract Amount
Basic Term: 08/10/2015 – 08/09/2018	\$0.00	\$0.00
Amendment No. 1: Amend Provision in Section 0400 11/03/2015	\$0.00	\$0.00
Amendment No. 2: Amend Provisions in Exhibit A and Correct Dates of Basic Term to 08/10/2015 – 08/09/2018 11/28/2016	\$0.00	\$0.00
Amendment No. 3: Option 1 - Extension 08/10/2018 – 08/09/2019	\$0.00	\$0.00
Amendment No. 4: Amend Provisions in Scope of Work Option 2 - Extension 08/10/2019 – 08/09/2020	\$0.00	\$0.00

- 4.0 MBE/WBE goals do not apply to this contract.
- 5.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 6.0 All other terms and conditions remain the same.



BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

TEGSCO, LLC (DBA AutoReturn)  
450 7<sup>th</sup> Street  
San Francisco, CA 94103

Signature: \_\_\_\_\_

Cindy Reyes  
Contract Management Specialist III  
City of Austin  
Purchasing Office



Amendment No.3  
of  
Contract No NR150000002  
for  
Total Management of Dispatch, Towing and Impound Services  
between  
TEGSCO, LLC (DBA AutoReturn)  
and the  
City of Austin

- 1.0 The City hereby exercises the extension option for the subject contract. This extension option will be effective August 10, 2018 to August 9, 2019. Two options remain.
- 2.0 The total contract authorization is recapped below:

Term	Contract Amount for the Item	Total Contract Amount
Basic Term: 08/10/2015 – 08/09/2018	\$0.00	\$0.00
Amendment No. 1: Amend Provision in Section 0400 11/03/2015	\$0.00	\$0.00
Amendment No. 2: Amend Provisions in Exhibit A and Correct Dates of Basic Term to 08/10/2015 – 08/09/2018 11/28/2016	\$0.00	\$0.00
Amendment No. 3. Option 1 - Extension 08/10/2018 – 08/09/2019	\$0.00	\$0.00

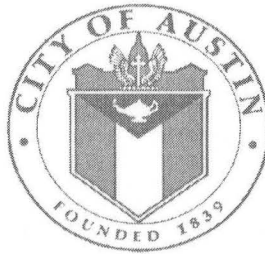
- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature: Raymond E. Krouse  
Printed Name: RAYMOND E. KROUSE, CFO

TEGSCO, LLC (DBA AutoReturn)  
450 7<sup>th</sup> Street  
San Francisco, CA 94103

Signature: Cindy Reyes  
Cindy Reyes  
Contract Management Specialist III  
City of Austin  
Purchasing Office



**Amendment No. 2  
to  
Contract No. NR150000002  
for  
Total Management of Dispatch, Towing and Impound Services  
for the  
Austin Police Department  
between  
TEGSCO, LLC (DBA AutoReturn)  
and the  
City of Austin**

- 1.0 The City hereby amends the above referenced contract to make the following changes:
- 1.1 Add the following to Exhibit A, Contract Scope of Work as Paragraph 9.J:  
"The APD Vehicle Processing Facilities under this Contract are located at 8200 South Congress Avenue, Austin, TX 78745 and at 205 Farley Drive, Austin, TX 78753."
- 1.2 Revise Exhibit A, Contract Scope of Work Paragraph 12.A.4 to read, "All notification fees collected on impounded vehicles, whether redeemed or sold at auction, except the \$10 garagekeeper abandoned vehicle notification fee and the \$50 notification fee for abandoned vehicles that are released; ... "
- 1.3 Correct the dates of the basic contract term to read 8/10/15-8/9/18.
- 2.0 The total Contract amount is recapped below:

Term	Contract Amount for the Item	Total Contract Amount
Basic Term: 9/1/15 – 8/30/18 (Revenue Contract)	\$0.00	\$0.00
Amendment No. 1: Amend Provision in Section 0400	\$0.00	\$0.00
Amendment No. 2: Amend Provisions in Exhibit A and Correct Dates of Basic Term to 8/10/15 - 8/9/18	\$0.00	\$0.00

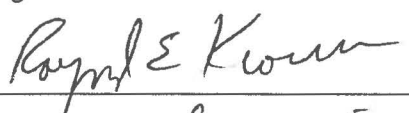
3.0 MBE/WBE goals were not established for this contract.

4.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

5.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURE(S) affixed below, this Amendment is hereby incorporated and made a part of the above referenced contract. This contract amendment shall become effective on the date executed by the City.

Signature & Date:

 11/23/2016

Printed Name: RAYMOND E. KROUSE  
TEGSCO LLC DBA AutoReturn  
450 7<sup>th</sup> Street  
San Francisco, CA 94103

Signature & Date:

 11-28-16

Roger Stricklin  
Corporate Contract Administrator  
City of Austin Purchasing Office



Amendment No. 1  
to  
Contract No. NR15000002  
for  
Total Management of Dispatch, Towing and Impound Services for the  
Austin Police Department  
between  
TEGSCO, L.L.C. ("AutoReturn")  
and the  
City of Austin, Texas

- 1.0 The City hereby amends the above referenced contract to clarify Section 0400-Supplemental Purchasing Provisions, Section 2, B, i wherein the following provision is hereby deleted in its entirety:

*Anyone providing services under this contract, including subcontractors, shall be covered by Texas Worker's Compensation*

- 2.0 The City hereby amends the above referenced contract to clarify Section 0400-Supplemental Purchasing Provisions, Section 2, B, I wherein the following provision is hereby added to the contract:

*Anyone providing services under this contract, including subcontractors performing services on City property, shall be covered by Texas Worker's Compensation. Subcontract tow operators not performing services on City property need only provide insurance in compliance with Texas state laws.*

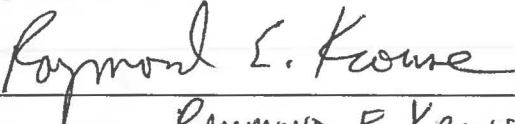
- 3.0 The total Contract amount is recapped below:

Term	Contract Amount for the Item	Total Contract Amount
Basic Term: 9/1/15 – 8/30/18 (Revenue Contact)	\$0.00	\$0.00
Amendment No. 1: Amend Provision in Section 0400	\$0.00	\$0.00

- 4.0 MBE/WBE goals were not established for this contract.
- 5.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 9.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURE(S) affixed below, this Amendment is hereby incorporated and made a part of the above referenced contract.

Signature & Date:



Printed Name: RAYMOND E. KROUSE  
Authorized Representative

TEGSCO, L.L.C. ("AutoReturn")  
450 7<sup>th</sup> Street  
San Francisco, California 94103

Signature & Date:



Monica L. McClure  
Corporate Contract Administrator  
City of Austin Purchasing Office

**CONTRACT BETWEEN THE CITY OF AUSTIN ("City")  
AND  
TEGSCO, L.L.C. ("AutoReturn") ("Contractor")  
for  
Total Management of Dispatch, Towing, and Impound Services for the  
Austin Police Department**

The City accepts the Contractor's Offer (as referenced in Section 1.1.3 below) for the above requirement and enters into the following Contract.

This Contract is between TEGSCO, L.L.C. ("AutoReturn") having offices at 450 7<sup>th</sup> Street, San Francisco, California 94103 and the City, a home-rule municipality incorporated by the State of Texas, and is effective as of the date executed by the City ("Effective Date").

Capitalized terms used but not defined herein have the meanings given them in Solicitation Number RFP EAD0119REBID.

**1.1 This Contract is composed of the following documents:**

1.1.1 This Contract

1.1.2 The City's Solicitation, Request for Proposal, EAD0119REBID including all documents incorporated by reference, including the Contract Scope of Work attached hereto as Exhibit A.

1.1.3 TEGSCO, L.L.C.'s ("AutoReturn") Offer, dated August 29, 2014, including subsequent clarifications

**1.2 Order of Precedence.** Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

1.2.1 This Contract

1.2.2 The City's Solicitation as referenced in Section 1.1.2, including all documents incorporated by reference, including the Contract Scope of Work attached hereto as Exhibit A.

1.2.3 The Contractor's Offer as referenced in Section 1.1.3, including subsequent clarifications.

**1.3 Term of Contract.** The Contract will be in effect for an initial term of thirty-six (36) months and may be extended thereafter for up to three (3) additional twelve (12) month periods extension option(s), subject to the approval of the Contractor and the City Purchasing Officer or his designee. See the Term of Contract provision in Section 0400 for additional Contract requirements.

**1.4 Quantity of Work.** There is no guaranteed quantity of work for the period of the Contract and there are no minimum order quantities. Work will be on an as needed basis as specified by the City for each Delivery Order

**1.5 Clarifications and Additional Agreements.** The following are incorporated into the Contract.



- 1.5.1 In addition to the insurance requirements stated in Item 2, Section 0400-Supplemental Purchasing Provisions, the Contractor shall also provide the following coverage:

**Commercial Crime Insurance.** Commercial Crime Insurance for all losses emanating from the handling of funds including, but not limited to, losses resulting from dishonest or criminal acts, fraud, embezzlement, forgery, misappropriation or loss of funds and errors in processing or reporting of funds. The policy must include coverage for employee theft or forgery of assets of the Contractor's clients. Coverage shall be written for a minimum limit of \$500,000.

- 1.5.2 The Contractor shall provide the following:

**Payment Bond.**

- A. The Contractor shall provide a Payment Bond in an amount of \$400,000 within fourteen (14) calendar days after notification of award. The Payment Bond serves as security for the faithful payment of all of the Contractor's obligations for subcontracts, work, labor, equipment, supplies, and materials furnished under the Contract. The Payment Bond shall be issued by a solvent company authorized to do business in the State of Texas, and shall meet any other requirements established by law or by the City pursuant to applicable law. The Surety must obtain reinsurance for any portion of the risk that exceeds 10% of the Surety's capital and surplus. For bonds exceeding \$100,000, the Surety must also hold a certificate of authority from the U.S. Secretary of the Treasury or have obtained reinsurance from a reinsurer that is authorized as a reinsurer in Texas and holds a certificate of authority from the U.S. Secretary of the Treasury.
- B. The Payment Bond shall remain in effect throughout the term of the Contract, and shall be renewed for each respective extension.

**Performance Bond.**

- A. The Contractor shall provide a Performance Bond in an amount of \$400,000 within fourteen (14) calendar days after notification of award. The Performance Bond serves as security for the faithful performance of all of the Contractor's obligations under the Contract. The Performance Bond shall be issued by a solvent company authorized to do business in the State of Texas, and shall meet any other requirements established by law or by the City pursuant to applicable law. The Surety must obtain reinsurance for any portion of the risk that exceeds 10% of the Surety's capital and surplus. For bonds exceeding \$100,000, the Surety must also hold a certificate of authority from the U.S. Secretary of the Treasury or have obtained reinsurance from a reinsurer that is authorized as a reinsurer in Texas and holds a certificate of authority from the U.S. Secretary of the Treasury.
- B. The Performance Bond shall remain in effect throughout the term of the Contract and shall be renewed for each respective extension.

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

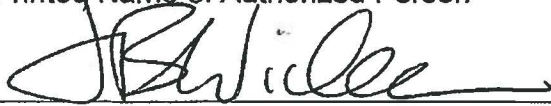
In witness whereof, the parties have caused a duly authorized representative to execute this Contract on the date set forth below.



TEGSCO, L.L.C. ("AutoReturn")

JOHN WICKER

Printed Name of Authorized Person



Signature

CEO

Title:

7/15/15

Date:

Exhibits:

Exhibit A – Contract Scope of Work

CITY OF AUSTIN

Teresa Reedy

Printed Name of Authorized Person



Signature

Corp Purchasing Manager

Title:

8/10/15

Date:

## **EXHIBIT A**

### ***Contract Scope of Work***

**SOLICITATION NO. EAD0119REBID**

#### **Total Management of Dispatch, Towing, and Impound Services for the Austin Police Department**

##### **1.0 PURPOSE**

The Contractor shall provide a system that will use modern technology to dispatch wreckers and manage impound services to accomplish the following goals:

- Reduce the amount of time officers and emergency communications staff spend on managing tow trucks and put their services to better use.
- Create a more efficient system which clears roadways quicker.
- To better serve citizens with features such as a website to locate towed vehicles, GPS for tracking the location of the nearest wrecker unit, etc.
- Increase the reporting capabilities of towing data.

The towing portion of this contract is only for Austin Police Department ("APD")-initiated tows. Except where specifically noted, this does not include towing of City vehicles, private property towing, towing to impound a vehicle for unresolved parking citations, or towing initiated by another City of Austin department.

##### **2.0 CONTRACTOR RESPONSIBILITIES**

Contractor shall provide all office space, storage capacity, vehicle processing area(s), equipment, facilities, communications and personnel necessary to perform all functions specified in this contract scope of work. It shall be the business decision of the Contractor to determine if they shall own, rent, lease, subcontract, etc. any office space, storage capacity, vehicle processing area(s), equipment, facilities, communications, and/or personnel necessary to perform all functions specified in this scope of work. If the Contractor chooses to utilize subcontractors for this scope of work, it is the responsibility of the Contractor to negotiate any payments or reimbursements directly to the subcontractor.

The following words and terms, when used in this RFP will have the following meanings, unless the context clearly shows otherwise:

**CONSENT TOW** means a tow of a motor vehicle initiated by the owner or operator of the vehicle or by a person who has possession, custody, or control of the vehicle. The term does not include a tow of a motor vehicle initiated by a peace officer investigating a traffic accident or a traffic incident that involves the vehicle.

**NON-CONSENT TOW** means a tow that is not a consent tow.

**TOWING LIST** means a list representing a group of qualified towing companies that are assigned to non-consent tows. The assignment of tows to the Towing List can be based on rotation, GPS, or another mutually agreed upon method by APD and Contractor.

##### **2.1 AUTOMATED MANAGED SYSTEM**

Contractor shall provide automated web-based systems capable of dispatch and inventory that is presently in use in State, County, or City Municipalities with over 500,000 individuals within their jurisdiction. The system shall allow multiple users within the Austin Police Department to access the information simultaneously.

- A. The system shall be able to send and receive data through multiple communication channels as needed including, but not limited to, computer and phone.

- B. The system shall be an encrypted secure system that allows multiple security levels for multiple users.
- C. The system should be able to track and verify location and time utilizing a real time Global Positioning System (GPS) system. This will enable the Contractor and APD to track vehicles and wreckers while in service.
- D. The system should provide real time location and tracking of tow trucks and shall be viewable by APD through the contracted vendor's website application.
- E. The system should include an easy to use navigation type website. This website shall be fully functioning at the time of contract award and provide vehicle owners with access to information regarding the balance due on their vehicle, the location of their vehicle, and any other pertinent information necessary for reclaiming possession of their vehicle.
- F. The system shall be able to dispatch tow trucks in various ways, including rotational, a hybrid-type GPS and closest-proximity basis to locations as requested by APD.
- G. APD will be able to enter the tow request into Contractor's system, then Contractor's system will take over and dispatch the tow operator. The system shall dispatch tow request immediately upon receipt of pick-up order via the communication system. Thereafter, Contractor shall monitor the progress until the tow is complete.
- H. The system shall be able to select the next tow truck for dispatch, if the primary tow truck is unable to meet the required timeframe.
- I. The system shall be able to locate towed vehicles by one or more of the following criteria: 1) vehicle identification number, 2) incident report number, 3) license plate number, and/or 4) vehicle owner's name.
- J. The system shall be able to produce reports which include at a minimum the quantity of tows performed and duration of days towed vehicles stay in impound.
- K. Although Private Property Impounds are not part of this new contract, the system shall be able to manage the reporting of Private Property Impounds within the City of Austin. These impounds shall be reported by the vehicle storage facility to the police department of the municipality from which the vehicle was towed within two (2) hours of receiving the vehicle at any facility in accordance with Texas Occupations Code, Section 2303.1511 as stated below:

**Texas Occupations Code, Sec. 2303.1511. VEHICLE STORAGE FACILITY'S DUTY TO REPORT AFTER ACCEPTING UNAUTHORIZED VEHICLE.**

(a) A vehicle storage facility accepting a vehicle that is towed under this chapter shall, within two hours after receiving the vehicle, report to the local law enforcement agency with jurisdiction over the area from which the vehicle was towed:

- (1) a general description of the vehicle;
- (2) the state and number of the vehicle's license plate, if any;
- (3) the vehicle identification number of the vehicle, if it can be ascertained;
- (4) the location from which the vehicle was towed; and
- (5) the name and location of the vehicle storage facility where the vehicle is being stored.

Source: Occupations code 2303

In accordance with City of Austin Code of Ordinances, the towing company shall notify the Austin Police Department within one (1) hour of retrieval of the vehicle, see City Ordinance, Sec. 13-6-74 as stated below:

**§ 13-6-74 - NOTIFICATION OF VEHICLE REMOVAL.**

(A) A towing company that removes a vehicle in accordance with Chapter 684 (Removal of Unauthorized Vehicles from Parking Facility or Public Roadway) of the Texas Transportation Code or in executing a repossession shall notify the department not later than one hour after the removal.

(B) The notification must include:

- (1) the name of the towing company;
- (2) the date, time, and location of the removal;
- (3) the physical description, license number and vehicle identification number of the vehicle removed;
- (4) the name of the tow truck operator who performed the removal; and
- (5) the storage location of the vehicle.

Source: 1992 Code Section 8-14-212(A); Ord. 031106-13; Ord. 031211-11.

Contractor shall act on behalf of APD and be responsible for managing the reporting of this data and providing a secure website and phone number for APD and vehicle owner access. These are impounds of

vehicles from private properties in accordance with applicable State of Texas statutes, rules and regulations including, but not limited to: Texas Occupations Code, Texas Administrative Code, Texas Transportation Code, and City of Austin Code of Ordinances. This Notification of Vehicle Removal shall include:

1. the name of the towing company;
2. the date, time and location of the removal;
3. the physical description, license number with state, and vehicle identification number of the vehicle removed;
4. the name of the tow truck operator who performed the removal; and
5. the storage location of the vehicle.

Additional reporting required shall be further defined in below Section 13.0 titled Reports.

- L. Contractor shall work with APD upon contract award to develop, with or without a third-party contractor such as Tri-Tech Software Solutions, and integrate the dispatching system back to police onboard computers, thereby enabling dispatch directly from APD vehicles or devices used in the field. Contractor shall work with APD and the City's IT staff to deploy a stand-alone tool for the City's dispatch operations or integrate with existing computer-aided ("CAD") solutions, as currently employed at APD through the City's third party vendor, Tri-Tech Software Solutions.
- M. The system shall be operational seven days per week, twenty-four hours per day, 365 days per year except for regular maintenance periods which shall be performed in off hours. Maintenance periods shall be scheduled in advance with APD via written communication, and no maintenance period shall take place for longer than fifteen (15) minutes without prior written consent of the City's Contract Manager.

## 2.2 DISPATCH CENTER

Contractor shall provide and maintain a facility to be used to house dispatch personnel. The dispatch center shall be located within the United States, and the size shall accommodate all required personnel and equipment capable of handling an estimated volume of 30,000 non-consent tows per year. The dispatch center shall be capable of answering calls within thirty seconds or less and never allow callers to receive a busy signal. Staffing levels at the dispatch center shall be adjusted by Contractor based on analysis of actual call volume data to efficiently maintain appropriate service levels. The dispatch center shall be operational twenty-four (24) hours per day, seven (7) days per week, and three hundred sixty-five (365) days a year. Per the statement above, it is acceptable that the dispatch center be located out of the corporate city limits of Austin.

When APD requests a tow truck, the dispatch center shall be able to communicate with APD officers, APD Emergency Communications, and tow truck operators by the most effective and efficient means possible. Contractor should utilize a real-time GPS or other navigation system to manage and deploy tow truck fleet. The GPS or navigation system should be available on all wreckers utilized under this contract, including subcontractors. The Contractor and their subcontractors will need to negotiate the details of the GPS or navigation system including ownership, cost, and any other details regarding the GPS or navigation system. All costs associated with the details of the GPS or navigation system, including costs for subcontractors, is the responsibility of Contractor to negotiate such costs with the Subcontractor. The dispatch center shall be able to administer the six categories of towing requests:

- A. Collision Request (Accident Scene Tow – Driver Designated) – The driver of a vehicle involved in a collision requests a specific towing company. The dispatch center shall assist the driver in contacting the requested company when the tow company is included in the list of approved APD permitted tow companies.
- B. Collision Tows (Accident Scene Tows) – The driver of a vehicle involved in a collision has no wrecker preference. The dispatch center shall follow the guidelines in Section 3.0-Tow Programs below.
- C. Service Request (Disabled Vehicle Tow – Driver Designated) – A disabled vehicle not involved in a collision and the driver requests a specific towing company. The dispatch center shall assist the driver in contacting the requested company when the tow company is included in the list of approved APD permitted tow companies.

- D. Service Calls (Disabled Vehicle Tows) – A disabled vehicle not involved in collisions and the driver has no preference of towing company. The dispatch center shall follow the guidelines in Section 3.0-Tow Programs below.
- E. Impound Towing – A vehicle to be removed that is evidence in a criminal offense, abandoned, junked or deemed a nuisance. It is towed to a designated vehicle storage facility. The dispatch center shall assign tow trucks to meet the required response times listed in Section 2.3-Vehicle Towing and Response Times.
- F. Zone Towing – The dispatch center shall assign tow trucks to zones which are designated by the Chief of Police to assist in clearing the roadways. The dispatch center shall follow the guidelines in Section 3.0-Tow Programs below.

## 2.3 VEHICLE TOWING AND RESPONSE TIMES

Contractor shall be required to provide or subcontract to provide all equipment, facilities, and personnel necessary to tow, impound, release and collect fees for the following:

- A. Abandoned Vehicle Tows: Pick-up orders for abandoned vehicles will be issued to the Contractor daily, Monday through Friday, except holidays observed by the City of Austin. The Contractor shall respond to pick-up orders for abandoned vehicles within twenty-four (24) hours after the pick-up order is issued.
- B. Junked or Nuisance Vehicle Tows: Notification of pending pick-up orders for junked or nuisance vehicles will be given to the Contractor not less than twenty-four hours prior to execution of the actual order as such time is designated in the actual order. Executable pick-up orders for towing of junked or nuisance vehicles shall be requested by the on-site APD Police Officer. The Contractor shall respond to these tow request within forty-five (45) minutes, Monday through Friday, except holidays observed by the City of Austin.
- C. Accident, Disabled Vehicle Scene, and Impound Tows: APD shall issue requests for authorized tows from the site of an accident or a disabled vehicle. The Contractor or their subcontractor should arrive at the scene within twenty (20) minutes after receiving and accepting notification from APD, twenty-four (24) hours a day, seven (7) days a week.
- D. Other Tows: Contractor shall move anything capable of being moved, pulled, pushed or operated on a roadway. The item may not be a vehicle according to the transportation code. For example, it may be a mobile home that has been abandoned on a roadway. These items shall be moved by a wrecker or tractor and transported to a City property or other designated location. If APD deems necessary, a police escort will be provided to escort the hazard. Contractor shall describe in their proposal the capability to provide other tows and response times.
- E. Traffic Incident Management Services (TIMS) Tows: For the TIMS towing program (described below, including days and hours), the Contractor or their subcontractor should arrive on the scene within ten (10) minutes after receiving and accepting notification.
- F. All response times shall be reviewed and adjusted six (6) months after the initial start of the contract based on data received during this period.

## 3.0 TOWING PROGRAMS

- A. Contractor shall establish and maintain a rotation of towing companies that are available to perform tows from an accident scene or from the scene of a disabled vehicle as requested by an APD Officer that is in compliance with the rules required to be adopted ("Adopted Rules") pursuant to Section 13-6-1Subsection (C) of Ordinance No. 20150521-005 (the "Ordinance") and Section 10.0 of this Contract Scope of Work.
  - 1. Contractor shall give all towing companies currently on APD's Non-Consent Tow Rotation the opportunity to enter into an agreement with the Contractor to provide towing services. Upon contract award, APD will provide the Contractor with the current list of towing



companies. Contractor shall make every reasonable effort to establish an agreement with all towing companies currently on the APD Non-Consent Tow Rotation List. During the Implementation Phase of this contract, the Contractor will provide APD with bi-weekly status reports showing what tow companies the Contractor has finalized agreements with and the status of all pending agreements. Once the towing agreements are executed, the Contractor shall notify APD immediately if any performance issues or disputes arise between the Contractor and any of the tow companies on the approved list.

2. Contractor may enter into agreements with additional towing companies which meet all equipment and personnel licensing and permitting applicable to the United States, State of Texas and City of Austin statutes, ordinances, rules and regulations governing tow trucks and tow truck operators. This includes, but is not limited to the: Texas Occupations Code, Texas Administrative Code, Texas Transportation Code; City of Austin Code of Ordinances, and all applicable towing rules including any updates or changes as they occur or are implemented.
  3. Wreckers shall mark their vehicles with their own required licensing information.
  4. Contractor shall remove a towing company from the list if the company fails to comply with all equipment and personnel licensing and permitting applicable to the United States, State of Texas and City of Austin statutes, ordinances, rules and regulations governing tow trucks and tow truck operators. This includes, but is not limited to the: Texas Occupations Code, Texas Administrative Code, Texas Transportation Code; City of Austin Code of Ordinances, and all applicable towing rules. APD will report to the Contractor any towing company on the list which is in violation of these rules. To be included in the list, the towing company shall:
    - a) maintain a 24-hour towing service seven days a week;
    - b) be able to immediately advise the Contractor of the availability of the company's tow truck;
    - c) have communication between the company's tow truck and the Dispatch Center;
    - d) have a minimum of two tow trucks.
- B. Traffic Incident Management Services (TIMS): Contractor shall have a system, consistent with the Adopted Rules to have tow trucks clear the major roadways of IH-35, MoPac Expressway, and Hwy 183 during peak traffic hours and special events as declared by the Austin Chief of Police. The vehicle shall be towed out of the right-of-way or hazardous area at no cost.
1. Peak traffic hours are defined as Monday through Friday, 6:00 am – 9:00 am and 4:00 pm – 7:00 pm, except holidays observed by the City of Austin.
  2. Contractor shall ensure the tow truck arrives at the scene within the response time standards as described in Section 2.3 E and F of this Contract after receiving and accepting notification.
  3. The towing company is prohibited from charging for removal of a vehicle from the right-of-way and may only charge a fee if the Citizen consents with the towing company to tow their vehicle.
  4. The removal location is subject to any applicable towing rules regarding consent and non-consent tows included in, but not limited to the Texas Occupations Code, Texas Administrative Code, Texas Transportation Code; City of Austin Code of Ordinances.
  5. Tow zones within the City are subject to negotiation and agreement between APD and Contractor upon contract implementation and then adjusted based upon experience through contract performance. Tow zones are subject to change as deemed necessary by both APD and Contractor

#### **4.0 WRECKER EQUIPMENT, SERVICE AND TRAINING**

- A. Wreckers shall meet all equipment and personnel licensing and permitting applicable to the United States, State of Texas and City of Austin statutes, ordinances, rules and regulations governing tow trucks and tow truck operators. This may include, but is not limited to the: Texas Occupations Code, Texas Administrative Code, Texas Transportation Code; Texas Department of Licensing and Regulation, City of Austin Code of Ordinances, and all applicable towing rules. Contractor shall submit, upon request by APD, a copy of required licenses and permits.

- B. Contractor shall have a means of providing reliable communication among all wreckers and impound dispatch location. This communication shall be capable of providing information throughout all areas within the jurisdiction of Austin, Texas and the surrounding area. The contractor shall maintain the required communication equipment for traffic incident management in each vehicle used for police impounds.
- C. Contractor shall provide tow truck operators fully capable of performing APD designated Class C (heavy duty) towing. The Class C operators may be divided into two separate groups:
1. The Simple Class C Tow. An example of this would be a tractor trailer involved in a minor collision involving another vehicle and there is not a significant amount of damage or debris field. An APD Officer will make the determination if the call is a simple class C tow.
  2. The Incident Management Class C Tow. An example of this incident scene is one or more tractor trailers involved in a collision and/or there is significant damage and debris, as determined by APD or Austin Fire Department personnel. These operators shall obtain certified training from Miller Industries, WreckMaster, or a similar APD approved certification program in Incident Management scenes and additional equipment use.
    - a) The training should include at a minimum:
      1. Truck and equipment capacities,
      2. Attachments of heavy duty vehicles,
      3. Rigging,
      4. Vehicle placement,
      5. Recovery formulas,
      6. Preparation for towing,
      7. Weather conditions,
      8. Knowledge of blood borne pathogens,
      9. Customer relations on the scene,
      10. Fire potential and working with fire departments,
      11. Proper maintenance of snatch blocks,
      12. Air cushion recovery,
      13. Hydraulic recovery,
      14. Scene assessment,
      15. Unloading,
      16. HAZMAT awareness,
      17. EPA awareness,
      18. Knowledge of drug and alcohol regulations,
      19. Incident management, and
      20. Documentation procedures
    - b) Contractors and/or subcontractors shall have the following additional equipment immediately accessible:
      1. One (1) 60 ton rotator
      2. Two (2) 50 ton heavy duty wrecker
      3. One (1) medium duty wrecker
      4. Two (2) heavy slide tandem axles
      5. One (1) lowboy trailer
      6. One (1) truck tractor tandem axle
      7. One (1) Landoll or City-approved trailer
      8. Four (4) light duty slides
      9. One (1) skid steer tractor with attachments
      10. One (1) wheel loader/forklift capable of operating in rough terrain (rubber tires)
      11. One (1) 48' enclosed trailer
      12. One (1) 48' reefer
      13. Twenty (20) absorbent bags
      14. Four (4) recovery barrels open
      15. Four (4) recovery barrels closed
      16. Four (4) overpack drums
      17. Shrink wrap

18. Banding equipment (steel or poly)

**5.0 FEE COLLECTION**

Towing Contractor Payment and Fees: Contractor shall collect, when a vehicle is released, all monies, including applicable taxes, due against the vehicle. The City Council annually establishes and approves the towing rate fee schedule. The current Fiscal Year 2014-2015 maximum rates were amended May 21, 2015 through Ordinance Number: 20150521-005 amending City Code Chapter 13-6 and amending Ordinance No. 20140908-003 relating to Non-Consent Towing Fees and at:

<http://www.austintexas.gov/edims/document.cfm?id=232081> and [https://assets.austintexas.gov/budget/14-15/downloads/fy15\\_approved\\_volume\\_II.pdf](https://assets.austintexas.gov/budget/14-15/downloads/fy15_approved_volume_II.pdf) on page 492. Contractor shall not charge a fee, or assess a fee for a service which is inconsistent with the most current guidelines established by the Austin City Council in the Austin City Code Chapter 13-6; ([https://www.municode.com/library/tx/austin/codes/code\\_of\\_ordinances?nodeId=TIT13TRSE\\_CH13-6VETOSE](https://www.municode.com/library/tx/austin/codes/code_of_ordinances?nodeId=TIT13TRSE_CH13-6VETOSE)) and all other applicable rules/laws and other fees applicable to tow trucks. Contractor shall accept the following forms of payment:

- A. ACH/Electronic Checks
- B. Cash (US Currency)
- C. Credit Cards (At a minimum: Visa, MasterCard, American Express, and Discover, or other optional cards at the City's and Contractor's discretion)
- D. Debit Cards

**6.0 VEHICLE STORAGE FACILITY**

The Contractor shall provide, or subcontract to provide a facility (or facilities) for impounding APD authorized tows and providing certain no-cost services to APD. This section establishes the minimum criteria for the vehicle storage facility.

- A. All impound storage facility(facilities) shall meet all licensing and inspections requirements according to the State of Texas statutes, rules and regulations, which may include, but are not limited to the: Texas Occupations Code, Texas Administrative Code, Texas Transportation Code, City of Austin Code of Ordinances, and all applicable vehicle storage rules.
- B. Facility (Facilities) shall be located within the corporate limits of the City of Austin.
- C. Number of facilities: The total number of impound facilities shall not exceed four (4) in addition to a facility designated for Abandoned/Junked vehicles. Multiple facilities shall be located on opposite sides of the city. For example if more than one facility is offered the condition would be to designate a facility north and the second lot shall be south. If a facility is designated east, the second shall be west. Impounded vehicles shall be taken to the closest facility of where the tow occurs to facilitate owner retrieval.
- D. Facility (Facilities) shall be accessible and not contain barriers limiting their use by people with disabilities and shall be in compliance with all ADA requirements.
- E. Storage Capacity: The facility (facilities) proposed should hold approximately 1,200 vehicles combined, with a minimum 275 of these spaces designated for vehicles held to be auctioned. The facility (facilities) proposed for the storage of all vehicles shall be fenced and secured. The fence(s) should be at least eight (8) foot high chain link with razor wire on top and shall be secured with a locking gate. Contractor can propose alternative to chain link with razor wire fencing. Final decision regarding acceptability of the alternate solution shall rest with APD.
- F. Vehicles shall be stored in a manner that shall prevent vandalism, minimize the possibility of damage, and facilitate removal.
- G. Documentation of Vehicle Condition: Contractor shall record the condition of each vehicle brought in for impound. A digital/video camera shall be used to take photos of all four (4) sides of the vehicle. Digital images documenting the condition of each vehicle shall be suitably indexed



and maintained for one year after the release or sale at auction of title vehicle. If directed by APD, the time period for retention of digital images may be extended beyond the above-stated time if there is pending or ongoing litigation involving the vehicle, and in accordance with applicable law.

- H. Release of Vehicles: Contractor shall maintain a staffed office and business telephone twenty-four (24) hours per day, seven (7) days per week for owners of vehicles to call and obtain information about their impounded vehicle and pick up vehicle. The telephone number shall be listed on the APD website and on the Internet.
- I. Vehicle Release Areas: Contractor shall provide indoor, well-lighted, climate controlled customer service areas at the vehicle storage area. The customer service areas shall be in compliance with Americans with Disability Act (ADA) requirements for accessibility.
- J. Landscaping: The outside area adjacent to and in front of the entrance to office spaces and reception areas should be landscaped to provide a reasonably pleasant visual appearance to people coming in and out of the building.
- K. Restrooms: Contractor shall provide restrooms in a sound state of maintenance, cleanliness, and repair, adequate to accommodate personnel who work at the storage facility, and accessible to individuals that may be conducting short-term business at the facility. Restrooms shall conform to standards for public facilities as specified in the Americans with Disabilities Act.
- L. Janitorial upkeep and pest control: Contractor should provide for daily janitorial service in the offices, reception, and restroom areas. No janitorial service will be required inside of the Vehicle Processing Facility, as defined in Section 9.0, No Cost Services Provided to the City, Item F & G herein, but trash shall be picked up from a designated container outside of the building on a regular basis. Pest control shall be provided in all buildings and adjacent work areas on an as-needed basis.
- M. Security System: The Vehicle Storage Facility entrances shall be designed in a manner that prevents unauthorized persons from entering the premises. Vehicle Storage Facilities shall be equipped with security lighting that adequately illuminates the facility and provides illumination for all areas of the facility. Contractor personnel shall escort claimants to vehicles being released.
- N. Entrance Signs: Contractor shall provide signs at the main entrance of each Vehicle Storage Facility. An illuminated sign that is readable in day or night conditions from the road at 150 feet viewing distance shall have the name of the storage facility and the information that this is the "Authorized City of Austin Impound Facility." Additionally, the sign shall include all information required by State of Texas rules and regulations related to Vehicle Storage Facilities. Other information displayed on the sign shall include brief references to method of payment accepted for vehicle release. This additional information shall be easily readable in day or night conditions from 75 feet viewing distance.
- O. Customer Service Area Signs: Contractor shall provide signs inside and outside of the customer service areas of the Vehicle Storage Facilities, in compliance with any State of Texas regulations pertaining to such placements. These signs shall display readable information regarding requirements, fees, and accepted methods of payment for release of vehicles from impound, as well as any other information that may be required by applicable State of Texas regulations.
- P. Business Hours: Contractor shall maintain a business office at each Vehicle Storage Facility, which shall be staffed and open for business 24 hours a day, seven (7) days a week, including weekends and all holidays.
- Q. Customer Relations: Contractor shall provide complete, professional, and courteous service to vehicle owners in all forms of communication, which includes but is not limited to email, telephone and in person.

- R. Copy Machine Access: Contractor shall provide a copy machine at each Vehicle Storage Facility for vehicle owners to use, free of charge, to make copies of documents required for the release of their vehicles.

## **7.0 AUCTION OF UNCLAIMED VEHICLES**

Any vehicles deemed impounded by APD that are unclaimed shall be sold at auction in accordance with applicable State of Texas statutes, rules and regulations including, but not limited to: Texas Occupations Code, Texas Administrative Code, Texas Transportation Code; City of Austin Code of Ordinances, and all applicable vehicle storage rules. APD will provide a vehicle identification number (VIN) check for each unclaimed vehicle.

- A. Contractor shall conduct the auction of Impounded Vehicles as authorized by law. Contractor shall subcontract and pay an auction firm that shall provide a professional auctioneer and one clerical person. Auctioneer conducting the auctions shall be licensed by the State of Texas as required by the Texas Department of Licensing and Regulation.
- B. APD will conduct the auction of Abandoned, Junked or Nuisance Vehicles. The auctioneer subcontracted by the Contractor shall provide auctioneer services.
- C. APD will be responsible for all mail notification (and/or newspaper advertisement) required by law to the owner/lien holder of Abandoned, Junked or Nuisance Vehicles.
- D. Contractor shall be responsible for all mail notification (and/or newspaper advertisement) required to the owner/lien holder of Impounded Vehicles.
- E. Contractor shall be responsible for providing APD the frequency of their auction schedule.
- F. Upon Contract award, Contractor shall negotiate with APD on additional action fee flexibility and the benefits of online auction functions.

## **8.0 CUSTOMER SERVICE**

Contractor shall oversee customer service and relations for all aspects of this towing management program. Contractor shall provide APD a list of standard operating procedures for customer service operations and include detail of complaint procedure management upon contract award. Specific procedures regarding the handling of escalated complaints should also be provided upon contract award.

## **9.0 NO COST SERVICES PROVIDED TO THE CITY**

Contractor shall provide certain no cost services to the City. Only APD Sergeants and above rank officers who identify themselves as so may authorize a no cost haul and storage. The no cost hauls are for a very specific type of tow, minimally used, and to be agreed upon by both APD and Contractor. and will not in any way replace the current Fleet Services towing contract for City-owned vehicles. APD Patrolmen are not authorized to initiate these no cost services. It shall be the responsibility of the Contractor to keep adequate record of the APD personnel who authorize the service. They are as follows:

- A. Hauls of non-City owned vehicles and City-owned vehicles to a designated City site or Contractor's storage site as directed by APD. Some of these hauls may require the use of dollies or slide trucks. Some may require medium duty or heavy duty wreckers depending on weight.
- B. Any vehicles towed or items stored on APD instructions, shall be released without towing, storage, impound or notification fee upon authorization from the Chief of Police or his designee.
- C. Vehicles, parts, etc., impounded that are stolen, found property, or evidence shall be stored at no expense to the City or the owner as long as a hold is in effect. Storage fees begin to accrue the day after the hold is dropped by the City. Vehicles, parts, etc. that are stolen property shall be released after towing and any storage fees are paid.

- D. **Excluded Storage:** Contractor shall be required to tow drug cars and seized cars to an APD facility (location is within the city limits of Austin and shall be disclosed upon award of contract). These cars are hereby defined as vehicles seized by the APD Narcotics Division as a narcotic seizure (vehicles used for transporting narcotics are taken away from their owners and not returned). The contractor shall not be required to provide storage of these vehicles. Approximately 5 -10 vehicles are towed monthly under this requirement.
- E. **Towing of storage of vehicles for Forensic:** Contractor shall be required to tow vehicles being processed as evidence to the APD Forensic Processing Facility. These tows will be requested by the APD Supervisor or Detective responsible for title code of offense related to the forensic hold.
- F. **APD Vehicle Processing Facility of Criminal Evidence:** shall be a fully enclosed workspace of sufficient size to store and process up to three (3) standard size automobiles at the same time. Specific design options and features of the Vehicle Processing Facility will be determined in consultation between the selected Contractor and the APD Contract Manager after contract award. However, the enclosed area should be approximately 75' by 30' and the Contractor shall include at least the following features:
1. Secured and controlled access to the building by APD only.
  2. Two (2) large bay doors with automatic garage door opener for each.
  3. Concrete floor.
  4. One standard entryway door for foot traffic.
  5. 11' to 15' insulated ceiling.
  6. A built-in work station in each of the four bay areas along the 75-foot wall, to include storage above and below the counter.
  7. Adequate fluorescent lighting, which shall provide an even distribution of light throughout the entire interior of the facility.
  8. Electrical outlets: Four (4) dedicated circuits, 20 amps each. Five (5) 4-plug electrical receptacles evenly spaced along back wall; three (3) 2-plug electrical outlets evenly spaced between counter and cabinets.
  9. Adequate climate control (heating and cooling) to maintain a comfortable indoor working environment.
  10. Built-in air exchange system, built to code requirements, to include explosion-proof exhaust fans for venting exhaust and chemical fumes.
  11. Sink area.
  12. Safety eyewash station meeting ANSI standard Z358.1-19-90.
  13. Bathroom.
  14. Pit in last bay area or an automatic vehicle lift for undercarriage inspections with safety railing separating pit area from other bays and foot-traffic areas. Tire guides, six (6) inches in height, shall be installed on the sides of the pit to safely guide vehicles being moved over the pit.
  15. Air compressor with one quick disconnect per bay.
  16. Retractable fluorescent droplights from the ceiling above each bay area (four total), and two retractable lights in the pit area with safety cover.
- G. **APD Vehicle Storage Area for the APD Vehicle Processing Facility:** shall be adjacent to or in close proximity to Vehicle Processing Facility and shall include:
1. An area that shall accommodate 10-20 vehicles.
  2. An area that is covered and paved with asphalt or concrete.
  3. A fenced and secured area. The fences shall be eight feet in height, chain link, with locking gate(s), and with razor wire affixed to the top of the fencing around the circumference of the storage area. Contractor-proposed alternative to chain link fencing will be considered and is subject to approval by APD.
  4. Secured and controlled access to the storage area by authorized APD Forensic personnel only.
  5. Contractor shall provide at no cost towing of vehicles involved in criminal activity or have suspected criminal evidence, to and from the Vehicle Storage Area and to and from the

Vehicle Processing Facility. This towing shall be conducted within one (1) hour of notification, twenty four hours a day, seven days a week, except City holidays.

- H. Utilities for APD Vehicle Processing Facility: APD will be responsible for paying for telephone, electrical, alarm monitoring, water, and sewer service.
- I. Maintenance for area around the APD Vehicle Processing Facility: Contractor shall be responsible for paying for trash pick-up and pest control.

#### **10.0 REASONABLE RULES AND REGULATIONS**

The Chief of Police or designee retains the right to establish Reasonable Rules and Regulations to ensure the efficient operation of conditions established under this contract. These Rules and Regulations will be developed after contract award and may be updated periodically during the term of this agreement. These Rules and Regulations should be agreeable to both parties, but Contractor shall be aware that the Rules and Regulations are under constant scrutiny and revision by both the City and the State of Texas and are, therefore, subject to update and/or revision. Contractor shall be expected to comply with all updates and/or revisions of Rules and Regulations.

#### **11.0 UNIFORMS FOR CONTRACTOR PERSONNEL**

Contractor's drivers, subcontractors, and other personnel who might reasonably be expected to be observed regularly by the public while performing their job functions shall wear their company's uniform, including shirts and work pants appropriate for the job they are performing. The shirt shall bear their own company name and the individual's full name. All Contractor employees and subcontractors shall be required to begin each shift wearing a clean uniform. Contractor shall provide its uniform policy upon Contract award.

#### **12.0 REVENUES TO THE CITY AND SUBCONTRACTORS**

- A. Contractor shall pay the City a referral fee on a monthly basis for the exclusive right to provide wrecker (towing of abandoned, junked, or nuisance vehicles and authorized impounds), impound, storage, and release services. A referral fee of \$70,000 shall be paid by the first (1<sup>st</sup>) of every month and shall represent an advance estimated payment for the fees to be collected during that month. Thereafter, at the end of the month, Contractor shall provide a monthly reconciliation report by the tenth (10<sup>th</sup>) of the subsequent month, and remit to the City 20% of actual fees collected during that month less the \$70,000 advance estimated payment, or request a refund, if applicable, of the actual fees collected which were under the pre-paid amount of \$70,000.

Gross contract collections shall include:

1. All towing fees collected for abandoned, junked or nuisance vehicles and/or impounded vehicles, whether redeemed or sold at auction;
2. All fully prepared for transport fees collected on abandoned, junked or nuisance vehicles and /or impounded vehicles;
3. All preservation fees collected for abandoned, junked or nuisance vehicles and/or impounded vehicles, whether redeemed or sold at auction;
4. All notification fees collected on impounded vehicles, whether redeemed or sold at auction;
5. All additional fees collected for clearing debris, winching, wait time, work time exceptional labor and specialized equipment for abandoned, junked, or nuisance vehicles and/or impounded vehicles, whether redeemed or sold at auction;
6. All impound fees collected for abandoned, junked or nuisance vehicles and/or impounded vehicles whether redeemed or sold at auction;
7. All storage fees collected for abandoned, junked or nuisance vehicles and/or impounded vehicles, whether redeemed or sold at auction, and;
8. All income collected at public auction of abandoned, junked, nuisance vehicles and/or impounded vehicles.

- B. Contractor shall remit payment to its tow-operator subcontractors weekly for the week's tows. Contractor and its tow-operator subcontractors shall negotiate the reporting requirements, but Contractor shall remit payment and submit reports no less than once per week.
- C. Exceptions: Sales taxes collected for remittance to the Texas Comptroller shall not be treated as part of Gross Contract Collections and shall be retained by Contractor
- D. The terms and conditions of the contract shall remain in full force and effect, however, the amount paid for the referral fee to the City shall be subject to a re-opener clause every twelve (12) months which shall reflect the value of Contractor's payments received from vehicle owners as indicated in the number of vehicles being impounded in the storage facility. The purpose of the re-opener clause is to verify data demonstrating the appropriateness of the referral fee paid the City and to make adjustments as necessary.
- E. In the event that a payment due date, either the first of every month, or the tenth of every month, falls on a weekend or holiday then payment shall be due on the next working day. It is preferable that payments be made by electronic funds transfer to the City of Austin account or by any means as directed by the APD.

### **13.0      REPORTS**

Reports shall be available electronically via automated system and downloadable in Microsoft Excel, Portable Document Format (PDF), or other format as agreed to by both parties.

#### **A. Accounting and Financial Records**

- 1. Collection of fees from the owners, agents and any persons having rightful possession of the vehicles hauled, impounded and/or stored in accordance with this contract is the responsibility of Contractor. Contractor shall maintain detailed records of such receipts and these records shall be available to APD for inspection. All records concerning impounds shall be kept for a minimum of three (3) years from the transaction date or longer if requested by APD if there is active or threatened litigation.
- 2. All records of Contractor pertaining to impound and all transactions involving this contract shall be open to inspection by the City during normal business hours.
- 3. Contractor shall establish and maintain during the term of this contract separate records and accounts, including a separate bank account, relating to the receipts of the impound and wrecker services rendered under this contract. These records and accounts shall be subject to the examination and audit by the City at any time.
- 4. The Contractor shall submit a detailed monthly report to APD showing, at a minimum, the revenue-producing tow and associated fees and the total gross revenue collected for the month and amount due to the City. Report is due no later than the tenth (10) of each month.
- 5. Contractor shall submit a financial statement ninety (90) days prior to the yearly anniversary of the contract and any subsequent contractual extensions. The financial statement shall include an income statement, balance sheet, statement of changes of financial position and notes. Annual statements shall be prepared in accordance with generally accepted accounting principles and reviewed by a Certified Public Accountant of the Contractor's choice. All financial statement and reports shall be submitted to the responsible COA Department Financial Services Division.
- 6. Contractor shall provide and the City of Austin, at their discretion, shall be able to obtain electronic financial and accounting reports of the contracted vendors auctioneer. The auctioneer reports shall provide car vehicle Identification Number (VIN), amount for which vehicle sold at auction, and copy of purchaser signature.

#### **B. Abandoned, Junk and Nuisance Vehicles - Contractor shall provide a report weekly to APD and include, at a minimum, all of the following information:**

- 1. Make, model (including year, color, body style),
- 2. Vehicle Identification number (VIN)
- 3. License plate number (LPN)



4. Date and time of each abandoned vehicle impound
  5. Date and time each vehicle redeemed, including VIN and LPN
  6. Owner's name, driver's license number, date of birth, address, and phone number,
  7. Reference to videotape index and footage, as appropriate to document any damage to and condition of the vehicle, Location where the vehicle was picked up,
  8. Date (year, month, and day) and time of impoundment,
  9. Employee number of clerks performing impounds, and release functions, date (year, month, and day) and time of release.
  10. Employee number of impounding tow truck operator.
  11. Employee number of officer requesting the impound, or employee number of abandoned vehicle unit employee requesting impoundment of Abandoned/Junked vehicle.
  12. Complete description of all unsecured property in the vehicle (to include passenger and cargo spaces.
  13. Vehicles sold at auction, including auction date, buyer's name, and sale price.
  14. Vehicles scheduled for sale at next auction, and auction date.
  15. Offense report or accident number.
  16. List of vehicles sold at auction, including to whom and sales price.
  17. List of vehicles to be sold at next auction, auction date
- C. Customer Service Reports – Contractor shall provide APD with a monthly detailed report listing any escalated customer complaints and the status of the resolution.
- D. Towing List – At any time, APD may request a list of towing companies included on the Non-Consent Tow List maintained by the Contractor.
- E. Towing Program Reports - Contractor shall provide monthly reports to APD for the towing programs. Information requirements shall be agreed upon by the Contractor and APD, but shall include at a minimum:
1. Wrecker(s) reporting to the scene
  2. Employee number(s) reporting to the scene
  3. Date and time for acceptance of tows
  4. Date and time for arrival on scene
  5. Date and time for departure of scene/removal from the right of way
  6. Vehicle make, model (including year, color, body style)
  7. Vehicle Identification Number (VIN)
  8. License Plate (LPN)

#### **14.0 COMPREHENSIVE IMPOUND AND RELEASE DATABASE**

Contractor shall maintain a comprehensive impound and release database. The database shall include data on numbers of tows by type (impound, abandoned, junked and no-charge) that can be downloaded for user-selected time periods, and shall track total storage times per vehicle. The database shall be configured to allow sorting on variables including, at a minimum, the impounded or abandoned/ junked status of vehicles, dates of arrival, release, auction, and identifying information on vehicles or owners. A monthly report shall be provided to APD by the tenth (10) of each month in a generally accepted format such as Excel or Comma-separated values (CSV) as directed by APD upon contract award and execution. The database shall include at least the following information for each vehicle processed:

1. Make, model (including year, color, body style),
2. Vehicle Identification Number (VIN),
3. License Plate Number (LPN),
4. Owner's name, driver's license number, date of birth, address, and phone number
5. Reference to videotape index and footage, as appropriate to document any damage to and condition of the vehicle,
6. Location where the vehicle was picked up,
7. Date (year, month, and day) and time of impoundment,

8. Employee number of clerks performing impounds and release functions, date (year, month, and day) and time of release
9. Employee number of impounding tow truck operator
10. Employee number of officer requesting the impound, or employee number of abandoned vehicle unit employee requesting impoundment of Abandoned/Junked vehicle
11. Complete description of all unsecured property in the vehicle (to include passenger and cargo spaces)
12. Vehicles sold at auction, including auction date, buyer's name, and sale price,
13. Vehicles scheduled for sale at next auction, and auction date,
14. Offense report or incident number.
15. Comprehensive Database shall integrate with the automated system.

**15.0      CONTRACT CLOSEOUT PROCEDURES**

Contractor shall provide APD with an itemized written inventory of all vehicles which remain unclaimed as of the expiration of this contract. The inventory shall be provided no later than thirty (30) day after the expiration date of the contract. The inventory shall include the date of impoundment, vehicle year, make/model, description of the vehicle, vehicle identification number, and name and address of legal owner of record.

### Deliverables/Milestones

<b>Deliverables/ Milestones</b>	<b>Description</b>	<b>Timeline (due/completion date, reference date, or frequency)</b>	<b>Performance Measure/ Acceptance Criteria</b>	<b>Contract Reference/ Section</b>
Automated Management System	Provide a web-based dispatch and inventory system	90 Days	Delivery to City	3.1
Dispatch Center	Provide a staffed facility for dispatching	90 Days	City Written Approval	3.2
Transition Plan/Implementation Plan	Provide a detailed schedule of transition from the existing vendor	30 Days	City Written Approval	
TIMS and Collision and Impound Towing Programs	Provide implementation schedule of towing programs	30 Days	City Written Approval	3.4
List of Partners/Agreements	Provide a list of towing companies participating in the program	90 Days	City Written Approval	3.4
Equipment List or Access to Equipment Information	Provide a list of towing equipment or equipment resources (if applicable)	90 Days	City Written Approval	3.5
Acquiring Vehicle Storage Facility	Provide a towing storage facility	90 Days	City Review and Acceptance	3.7
APD Vehicle Storage Facility	Provide a towing storage facility accessible only to APD	90 Days	City Review and Acceptance	3.10
Rules and Regulations	Develop with APD	At beginning of contract	City Written Approval	3.11
Reporting	Provide a revenue report	Monthly	Delivery to City	3.14
Reporting	Provide a financial statement	Yearly	Delivery to City	3.14
Reporting	Provide an auctioneer report	On demand	Delivery to City	3.14
Reporting	Provide an abandoned/junk and nuisance report	Weekly	Delivery to City	3.14
Reporting	Provide a customer service report	Monthly	Delivery to City	3.14



Reporting	Provide a list of towing companies on the program	On demand	Delivery to City	3.14
Reporting	Provide towing program reports	Monthly	Deliver to City	3.14
Fully Operational	All services effective	120 Days	Delivery to City	

Response to request for proposals to the

**City of Austin  
Purchasing Office**

To provide

**Total Management of Dispatch,  
Towing, and Impound Services  
for Austin Police Department**

Submitted by



TEGSCO, LLC  
450 7<sup>th</sup> Street  
San Francisco, CA 94103  
Phone: 415-575-2340  
Fax: 415-575-2341  
[www.autoreturn.com](http://www.autoreturn.com)

Proposal Due Date: September 3, 2014  
Request for Proposal Solicitation No: EAD0119REBID



**CITY OF AUSTIN, TEXAS**  
Purchasing Office  
**REQUEST FOR PROPOSAL (RFP)**  
**Offer Sheet**

**SOLICITATION NO:** EAD0119REBID

**DATE ISSUED:** 8/11/14

**REQUISITION NO.:** 14050500334

**COMMODITY CODE:** 96890

**COMMODITY/SERVICE DESCRIPTION:** Total Management of Dispatch, Towing, and Impound Services for the Austin Police Department

**NON-MANDATORY PRE-PROPOSAL CONFERENCE TIME AND DATE:** 8/21/14 9 AM – 10 AM

**LOCATION:** RBJ Building  
15 Waller Street, 3<sup>rd</sup> Floor Conference Room  
Austin, TX 78702

**FOR CONTRACTUAL AND TECHNICAL ISSUES CONTACT THE FOLLOWING AUTHORIZED CONTACT PERSON:**

Erin D'Vincent  
Senior Buyer Specialist  
**Phone:** (512) 972-4017  
**E-Mail:** [erin.dvincent@austintexas.gov](mailto:erin.dvincent@austintexas.gov)

**PROPOSAL DUE PRIOR TO:** 9/3/14

**PROPOSAL CLOSING TIME AND DATE:** 11:00 AM, local time

**LOCATION:** MUNICIPAL BUILDING, 124 W 8<sup>th</sup> STREET  
RM 308, AUSTIN, TEXAS 78701

**When submitting a sealed Offer and/or Compliance Plan, use the proper address for the type of service desired, as shown below:**

Street Address for Hand Delivery or Courier Service
City of Austin, Municipal Building
Purchasing Office-RFP EAD0119REBID
124 W 8 <sup>th</sup> Street, Rm 310
Austin, Texas 78701
Reception Phone: (512) 974-2500

**To ensure prompt delivery, all packages SHALL BE CLEARLY MARKED ON THE OUTSIDE "Purchasing Office-Response Enclosed" along with the offeror's name & address, solicitation number and due date and time. See Section 0200 Solicitation Instructions for more details.**

**All Offers (including Compliance Plans) that are not submitted in a sealed envelope or container will not be considered.**

**SUBMIT 1 PAPER ORIGINAL AND 6 INDIVIDUAL ELECTRONIC COPIES OF YOUR RESPONSE ON A CD OR FLASH DRIVE IN THE PACKAGE WITH THE ORIGINAL COPY OF THE SOLICITATION RESPONSE**

A handwritten signature in blue ink, appearing to read "John B. Wicker".

Solicitation No. RFP EAD0119REBID

John B. Wicker

CEO, TEGSCO, LLC ("AutoReturn")

Dated: August 29, 2014

The Vendor agrees, if this Offer is accepted within 180 calendar days after the Due Date, to fully comply in strict accordance with the Solicitation, specifications and provisions attached thereto for the amounts shown on the accompanying Offer.

If I am awarded the contract I agree to continue complying with the City's MBE/WBE Procurement Program Ordinance and Rules including contacting SMBR if any subcontracting is later identified.

The undersigned, by his/her signature, represents that he/she is submitting a binding offer and is authorized to bind the respondent to fully comply with the solicitation document contained herein. The Respondent, by submitting and signing below, acknowledges that he/she has received and read the entire document packet sections defined above including all documents incorporated by reference, and agrees to be bound by the terms therein.

Company Name: TEGSCO, LLC ("AutoReturn")

Federal Tax ID No.: [REDACTED]

Printed Name of Officer or Authorized Representative: John B. Wicker

Title: CEO and President

Signature of Officer or Authorized Representative: 

Date: August 29, 2014

Address: 450 7th Street, San Francisco, CA 94103

E-Mail Address: jwicker@autoreturn.com

Phone Number: 415-575-2355

**\* Proposal response must be submitted with this Offer sheet to be considered for award**

**CITY OF AUSTIN  
PURCHASING OFFICE  
STANDARD PURCHASE TERMS AND CONDITIONS**

By submitting an Offer in response to the Solicitation, the Contractor agrees that the Contract shall be governed by the following terms and conditions. Unless otherwise specified in the Contract, Sections 3, 4, 5, 6, 7, 8, 20, 21, and 36 shall apply only to a Solicitation to purchase Goods, and Sections 9, 10, 11 and 22 shall apply only to a Solicitation to purchase Services to be performed principally at the City's premises or on public rights-of-way.

1. **CONTRACTOR'S OBLIGATIONS**. The Contractor shall fully and timely provide all deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.
2. **EFFECTIVE DATE/TERM**. Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.
3. **CONTRACTOR TO PACKAGE DELIVERABLES**: The Contractor will package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price. Unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
4. **SHIPMENT UNDER RESERVATION PROHIBITED**: The Contractor is not authorized to ship the deliverables under reservation and no tender of a bill of lading will operate as a tender of deliverables.
5. **TITLE & RISK OF LOSS**: Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables.
6. **DELIVERY TERMS AND TRANSPORTATION CHARGES**: Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the deliverables. The place of delivery shall be that set forth in the block of the purchase order or purchase release entitled "Receiving Agency".
7. **RIGHT OF INSPECTION AND REJECTION**: The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.
8. **NO REPLACEMENT OF DEFECTIVE TENDER**: Every tender or delivery of deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.
9. **PLACE AND CONDITION OF WORK**: The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which

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could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

**10. WORKFORCE**

- A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property .
  - i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or
  - ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

- 11. COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS:** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

**12. INVOICES:**

- A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.
- B. **Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.
- C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.
- D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
- E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

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13. **PAYMENT:**

- A. All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.
- B. **If payment is not timely made, (per paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
  - i. delivery of defective or non-conforming deliverables by the Contractor;
  - ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
  - iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
  - iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
  - v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
  - vi. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
  - vii. failure of the Contractor to comply with any material provision of the Contract Documents.
- E. Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- F. Payment will be made bycheck unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.
- G. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

14. **TRAVEL EXPENSES:** All travel, lodging and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Solicitation will be reviewed against the City's Travel Policy as published and maintained by the City's Controller's Office and the Current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:



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<http://www.gsa.gov/portal/category/21287>

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of detailed itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations.

**15. FINAL PAYMENT AND CLOSE-OUT:**

- A. If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project manager or Contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.
- B. The making and acceptance of final payment will constitute:
  - i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
  - ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

**16. SPECIAL TOOLS & TEST EQUIPMENT:** If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

**17. RIGHT TO AUDIT:**

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.
- B. The Contractor shall include section a. above in all subcontractor agreements entered into in connection with this Contract.

**18. SUBCONTRACTORS:**

- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and



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Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

- B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
- i. require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
  - ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
  - iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
  - iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
  - v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

**19. WARRANTY-PRICE:**

- A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.
- B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
- C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

20. **WARRANTY – TITLE:** The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the deliverables.

21. **WARRANTY – DELIVERABLES:** The Contractor warrants and represents that all deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and

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regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the deliverables shall be new or recycled merchandise, and not used or reconditioned.

- A. Recycled deliverables shall be clearly identified as such.
  - B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.
  - C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the deliverables or from the date of acceptance of any replacement deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming deliverables, or replace the non-conforming deliverables with fully conforming deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.
  - D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such deliverables from another source.
  - E. If the Contractor is not the manufacturer, and the deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.
22. **WARRANTY – SERVICES:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
  - B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.
  - C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.
23. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior

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to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

24. **RIGHT TO ASSURANCE:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
25. **STOP WORK NOTICE:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.
26. **DEFAULT:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.
27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
28. **TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
29. **FRAUD:** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.
30. **DELAYS:**
- A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an

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adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 49. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

- B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

**31. INDEMNITY:**

A. Definitions:

- i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
- (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or
  - (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),
- ii. "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

- B. **THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

**32. INSURANCE:** (reference Section 0400 for specific coverage requirements). The following insurance requirement applies. (Revised 6/01/98).

A. General Requirements.

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.

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- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- vii. If insurance policies are not written for amounts specified in Section 0400, Supplemental Purchase Provisions, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.
- xii. The Contractor shall endeavor to provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- xiii. The insurance coverages specified in Section 0400, Supplemental Purchase Provisions, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

**B. Specific Coverage Requirements: Specific insurance requirements are contained in Section 0400, Supplemental Purchase Provisions**

33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit,

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or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2<sup>nd</sup> Street, 4<sup>th</sup> Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

34. **NOTICES**: Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.
35. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL**: All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
36. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS**: The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the deliverables and (ii) the deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such deliverables will not impact such warranties of Contractor.
37. **CONFIDENTIALITY**: In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
38. **OWNERSHIP AND USE OF DELIVERABLES**: The City shall own all rights, titles, and interests throughout the world in and to the deliverables.



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- A. Patents. As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.
- B. Copyrights. As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this Paragraph 38 shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.
- C. Additional Assignments. The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 38 a., b., and c. shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph 37 above.
39. **PUBLICATIONS**: All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.
40. **ADVERTISING**: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
41. **NO CONTINGENT FEES**: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
42. **GRATUITIES**: The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City

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shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

43. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS**: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
44. **INDEPENDENT CONTRACTOR**: The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
45. **ASSIGNMENT-DELEGATION**: The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
46. **WAIVER**: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
47. **MODIFICATIONS**: The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
48. **INTERPRETATION**: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.
49. **DISPUTE RESOLUTION**:
- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

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- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.
50. **JURISDICTION AND VENUE:** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.
51. **INVALIDITY:** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.
52. **HOLIDAYS:** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

53. **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.
54. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

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The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

**55. EQUAL OPPORTUNITY**

- A. **Equal Employment Opportunity:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.
- B. **Americans with Disabilities Act (ADA) Compliance:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

**56. BUY AMERICAN ACT-SUPPLIES (Applicable to certain Federally funded requirements)**

- A. Definitions. As used in this paragraph –
- i. "Component" means an article, material, or supply incorporated directly into an end product.
  - ii. "Cost of components" means -
    - (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
    - (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.
  - iii. "Domestic end product" means-
    - (1) An unmanufactured end product mined or produced in the United States; or
    - (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.
  - iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.
  - v. "Foreign end product" means an end product other than a domestic end product.
  - vi. "United States" means the 50 States, the District of Columbia, and outlying areas.

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- B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
- C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.
- D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

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The following Supplemental Purchasing Provisions apply to this solicitation:

1. **EXPLANATIONS OR CLARIFICATIONS:** (reference paragraph 5 in Section 0200)

All requests for explanations or clarifications must be submitted in writing to the Purchasing Office by email to [erin.dvincent@austintexas.gov](mailto:erin.dvincent@austintexas.gov) no later than ten business days close of business before the due date of the proposal.

2. **INSURANCE:** Insurance is required for this solicitation.

A. **General Requirements:** See Section 0300, Standard Purchase Terms and Conditions, paragraph 32, entitled Insurance, for general insurance requirements.

- i. The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award
- ii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iii. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.
- iv. The Certificate of Insurance, and updates, shall be mailed to the following address:

City of Austin Purchasing Office  
P. O. Box 1088  
Austin, Texas 78767

B. **Specific Coverage Requirements:** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

- i. **Worker's Compensation and Employers' Liability Insurance:** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.
  - (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
    - (a) Waiver of Subrogation, Form WC420304, or equivalent coverage
    - (b) Thirty (30) days Notice of Cancellation, Form WC420601, or equivalent coverage

Anyone providing services under this contract, including subcontractors, shall be covered by Texas Worker's Compensation.

- ii. **Commercial General Liability Insurance:** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
  - (1) The policy shall contain the following provisions:
    - (a) Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
    - (b) Contractor/Subcontracted Work.
    - (c) Products/Completed Operations Liability for the duration of the warranty period.



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- (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and/or Underground Coverage.
  - (2) The policy shall also include these endorsements in favor of the City of Austin:
    - (a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
    - (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
    - (c) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage
- iii. **Business Automobile Liability Insurance:** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.
  - (1) The policy shall include these endorsements in favor of the City of Austin:
    - (a) Waiver of Subrogation, Endorsement CA0444, or equivalent coverage
    - (b) Thirty (30) days Notice of Cancellation, Endorsement CA0244, or equivalent coverage
    - (c) The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.
- iv. **Garage Liability Coverage.** The Contractor may provide Garage Liability coverage in place of the Commercial General Liability and Business Automobile Liability policies. The Garage Liability policy shall provide a minimum limit of liability of \$500,000 Auto Only / \$500,000 Aggregate other than Auto. Coverage shall be provided for all owned, hired, and non-owned vehicles.
  - (1) The policy shall contain the following endorsements in favor of the City of Austin:
    - (a) Waiver of Subrogation.
    - (b) Thirty (30) days Notice of Cancellation.
    - (c) The City of Austin listed as an additional insured.
- v. **Property Coverage.** The Contractor shall provide all risk physical loss coverage for the vehicle and equipment in the care, custody, and control of the Contractor. Coverage shall continue until the work is accepted by the City. The limit of coverage required is the total estimated actual cash value of vehicles/equipment in the Contractor's care, custody, and control at any given time. The minimum limit of liability shall be \$100,000 with the ability to be increased to \$500,000 during the Contract term.
  - (1) City of Austin shall be added as loss payee.
- vi. **Garagekeepers Liability.** The Contractor may provide Garagekeepers Liability for the required property coverage for vehicles in the care, custody, and control of the Contractor. Comprehensive and collision coverage shall be provided on a Legal Liability basis. The limit of coverage required is the total estimated actual cash value of vehicles in the Contractors care, custody, and control at any given time. The minimum limit of liability shall be \$100,000 with the ability to be increased to \$500,000 during the Contract term.
  - (1) City of Austin shall be added as loss payee.
- C. **Endorsements:** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

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- D. **Additional Information:** The Contractor is required to ensure that all services provided under this contract are covered by insurance; this includes, but is not limited to, all wreckers used for towing, personnel providing the services, and property insurance for vehicles being towed. The City recommends the Contractor submit the insurance requirements from this solicitation to an insurance agent for review. An agent/broker can provide the information needed to manage the insurance requirements under this contract. All wreckers, including subcontractors providing services under this contract shall be covered by auto liability meeting the required limits as indicated in the solicitation. The insurance requirements shown in this solicitation apply to all services provided under this contract. If the Contractor is providing the services themselves, then the Contractor shall provide the insurance. If the Contractor is subcontracting the work, the Contractor has the option to either provide the insurance to cover the subcontractor, or have the subcontractor provide the required coverages including endorsements to all policies to the Contractor.

3. **TERM OF CONTRACT:**

- A. The Contract shall be in effect for an initial term of 36 months and may be extended thereafter for up to 3 additional 12 month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.
- B. Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this agreement for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 180 days unless mutually agreed on in writing).
- C. Upon written notice to the Contractor from the City's Purchasing Officer or his designee and acceptance of the Contractor, the term of this contract shall be extended on the same terms and conditions for an additional period as indicated in paragraph A above.
- D. Prices are firm and fixed for the first 12 months. Thereafter, price changes are subject to the Economic Price Adjustment provisions of this Contract.

4. **INVOICES and PAYMENT:** (reference paragraphs 12 and 13 in Section 0300)

- A. Invoices shall contain a unique invoice number and the information required in Section 0300, paragraph 12, entitled "Invoices." Invoices received without all required information cannot be processed and will be returned to the vendor.

Invoices shall be mailed to the below address:

	City of Austin
Department	Austin Police Department
Attn:	Financial Management
Address	P.O. Box 1629
City, State Zip Code	Austin, TX 78767

- B. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer (EFT) for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.

5. **NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING:**

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- A. On November 10, 2011, the Austin City Council adopted Ordinance No. 20111110-052 amending Chapter 2.7, Article 6 of the City Code relating to Anti-Lobbying and Procurement. The policy defined in this Code applies to Solicitations for goods and/or services requiring City Council approval under City Charter Article VII, Section 15 (Purchase Procedures). During the No-Contact Period, Offerors or potential Offerors are prohibited from making a representation to anyone other than the Authorized Contact Person in the Solicitation as the contact for questions and comments regarding the Solicitation.
- B. If during the No-Contact Period an Offeror makes a representation to anyone other than the Authorized Contact Person for the Solicitation, the Offeror's Offer is disqualified from further consideration except as permitted in the Ordinance.
- C. If an Offeror has been disqualified under this article more than two times in a sixty (60) month period, the Purchasing Officer shall debar the Offeror from doing business with the City for a period not to exceed three (3) years, provided the Offeror is given written notice and a hearing in advance of the debarment.
- D. The City requires Offerors submitting Offers on this Solicitation to provide a signed Section 0810, Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying Affidavit, certifying that the Offeror has not in any way directly or indirectly made representations to anyone other than the Authorized Contact Person during the No-Contact Period as defined in the Ordinance. The text of the City Ordinance is posted on the Internet at: <http://www.ci.austin.tx.us/edims/document.cfm?id=161145>

**6. ECONOMIC PRICE ADJUSTMENT:**

- A. **Price Adjustments:** Prices shown in this Contract shall remain firm for the first 12 months of the Contract. After that, in recognition of the potential for fluctuation of the Contractor's cost, a price adjustment (increase or decrease) may be requested by either the City or the Contractor on the anniversary date of the Contract or as may otherwise be specified herein. The percentage change between the contract price and the requested price shall not exceed the percentage change between the specified index in effect on the date the solicitation closed and the most recent, non-preliminary data at the time the price adjustment is requested. Prices for products or services unaffected by verifiable cost trends shall not be subject to adjustment.
- B. **Effective Date:** Approved price adjustments will go into effect on the first day of the upcoming renewal period or anniversary date of contract award and remain in effect until contract expiration unless changed by subsequent amendment.
- C. **Adjustments:** A request for price adjustment must be made in writing and submitted to the other Party prior to the yearly anniversary date of the Contract; adjustments may only be considered at that time unless otherwise specified herein. Requested adjustments must be solely for the purpose of accommodating changes in the Contractor's direct costs. Contractor shall provide an updated price listing once agreed to adjustment(s) have been approved by the parties.
- D. **Indexes:** In most cases an index from the Bureau of Labor Standards (BLS) will be utilized; however, if there is more appropriate, industry recognized standard then that index may be selected.
  - i. The following definitions apply:
    - (1) **Base Period:** Month and year of the original contracted price (the solicitation close date).
    - (2) **Base Price:** Initial price quoted, proposed and/or contracted per unit of measure.
    - (3) **Adjusted Price:** Base Price after it has been adjusted in accordance with the applicable index change and instructions provided.
    - (4) **Change Factor:** The multiplier utilized to adjust the Base Price to the Adjusted Price.
    - (5) **Weight %:** The percent of the Base Price subject to adjustment based on an index change.

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- ii. **Adjustment-Request Review:** Each adjustment-request received will be reviewed and compared to changes in the index(es) identified below. Where applicable:
- (1) Utilize final Compilation data instead of Preliminary data
  - (2) If the referenced index is no longer available shift up to the next higher category index.
- iii. **Index Identification:** Complete table as they may apply.

Weight % or \$ of Base Price: 100%	
Database Name: Employment Cost Index	
Series ID: CIU2010000000000A (B)	
<input checked="checked" type="checkbox"/> Not Seasonally Adjusted	<input type="checkbox"/> Seasonally Adjusted
Geographical Area: All	
Description of Series ID: Private industry	
This Index shall apply to the following items of the Cost Proposal: Anything labor related	

- E. **Calculation:** Price adjustment will be calculated as follows:

**Single Index:** Adjust the Base Price by the same factor calculated for the index change.

Index at time of calculation
Divided by index on solicitation close date
Equals Change Factor
Multiplied by the Base Rate
Equals the Adjusted Price

- F. If the requested adjustment is not supported by the referenced index, the City, as its sole discretion, may consider approving an adjustment on fully documented market increases.

7. **INTERLOCAL PURCHASING AGREEMENTS:** (applicable to competitively procured goods/services contracts).

- A. The City has entered into Interlocal Purchasing Agreements with other governmental entities, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions to other eligible governmental agencies that have an interlocal agreement with the City.
- B. The City does not accept any responsibility or liability for the purchases by other governmental agencies through an interlocal cooperative agreement.

8. **CONTRACT MANAGER:** The following person is designated as Contract Manager, and will act as the contact point between the City and the Contractor during the term of the Contract:

Mary Ann Carney

(512) 974-4543

[MaryAnn.Carney@austintexas.gov](mailto:MaryAnn.Carney@austintexas.gov)

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\*Note: The above listed Contract Manager is not the authorized Contact Person for purposes of the **NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING Provision** of this Section; and therefore, contact with the Contract Manager is prohibited during the no contact period.

# **Scope of Work**

## **SOLICITATION NO. EAD0119REBID**

### **Description: Total Management of Dispatch, Towing, and Impound Services for the Austin Police Department**

#### **1.0 Purpose**

The City of Austin, hereinafter referred to as "City", seeks proposals in response to this Request for Proposal (RFP) for firms or individuals qualified and experienced in providing total management of dispatch, towing, and impound services as directed by the City. A Contract with the City of Austin is subject to the approval and resolution of an Ordinance and delegation of authority by City Council. The Austin Police Department (APD) is looking to migrate into a system that will use modern technology to dispatch wreckers and accomplish the following goals:

- Reduce the amount of time officers and emergency communications staff spend on managing tow trucks and put their services to better use.
- Create a more efficient system which clears roadways quicker.
- Introduce more modern technology into the program to better serve citizens with features such as a website to locate towed vehicles, GPS for tracking the location of the nearest wrecker unit, etc.
- Increase the reporting capabilities of towing data.

The towing portion of this contract is only for APD initiated tows. Except where specifically noted, this does not include towing of City vehicles, private property towing, towing to impound a vehicle for unresolved parking citations, or towing initiated by another City of Austin department.

#### **2.0 Background**

This section will address areas in which APD authorizes vehicle towing and impound. Statistical information is for informational purposes only. The City will not be held responsible for inaccuracies. The following information outlines the current operation.

In Fiscal Year (FY) 2013 (October 2012 – September 2013) approximately 14,000 vehicles were towed to an impound facility and approximately 1,300 of these vehicles were sold at auctioned. The average price for a vehicle at auction during this time period was \$636. Storage fees vary widely from vehicle to vehicle, but the annual average storage fee for FY 2013 was \$140. Under the contract resulting from this RFP, it is estimated 14,500 vehicles will be towed and approximately 1,350 vehicles will be auctioned annually. There are approximately 120 calls per day for all tows combined. APD doesn't currently have the ability to capture the number of calls per specific tow (i.e. accident tows, light duty tows, etc.).

#### **APD's Current Operations:**

##### **2.1 VEHICLE STORAGE FACILITY LOT**

Abandoned, junked or nuisance, and impound vehicles are currently towed to a privately owned and operated facility contracted by the City. The storage facility is approximately 13 acres in size and can accommodate approximately 1,600 vehicles.

##### **2.2 ABANDONED, JUNKED OR NUISANCE VEHICLES**

Abandoned, junked, or nuisance vehicles which have been appropriately tagged by City staff are towed to the above mentioned facility by a contracted wrecker service. Release of vehicles is available twenty-four (24) hours a day, seven (7) days a week. Auctions of unclaimed vehicles are conducted weekly and the Contractor commissions and pays the auctioneer. APD mails notification and/or a newspaper advertisement of the auction as required by law and the City currently receives twenty (20%) percent of the total auction proceeds.

##### **2.3 APD AUTHORIZED IMPOUNDS**



A Contractor currently provides towing of certain cars, trucks, and other vehicles as directed by APD. These impounds may include disabled vehicles posing a hazard to traffic, vehicles used during a criminal act, illegally parked cars, vehicles belonging to persons who have been arrested, and recovered stolen vehicles. Release of vehicles is available twenty-four (24) hours a day, seven (7) days a week. Auctions of unclaimed vehicles are conducted weekly. The Contractor commissions the auctioneer, mails notification and/or newspaper advertisement as required by law. The City receives twenty (20%) percent of the auction proceeds.

## 2.4 FEE COLLECTION

A Contractor currently collects all fees for towing, storage, and preservation of vehicles then remits twenty (20%) percent of the gross proceeds to the City on a monthly basis. Auction of unclaimed impounded vehicles are coordinated through the current Contractor and twenty (20%) percent of the auction proceeds are paid to the City monthly. The yearly average revenue to the City totals approximately \$850,000.00.

## 2.5 ROTATIONAL TOWING & TRAFFIC INCIDENT MANAGEMENT SYSTEM PROGRAMS

Rotational Towing: Wreckers are used for vehicles that require towing from the scene of a crash or parked and unattended vehicles on a public roadway which are deemed inoperable if it is not possible for the driver to select a properly licensed towing company.

Traffic Incident Management System (TIMS): During peak traffic hours, APD schedules tow trucks to sit on the major roadways of IH-35, MoPac Expressway, and Hwy 183 in established zones. These trucks are quickly dispatched to remove disabled vehicles from the roadway in order to keep traffic flowing.

During a TIMS dispatch, the car is towed to the nearest place of safety at no cost to the operator of the vehicle or APD. The operator of the vehicle may contract with that tow truck operator, call their own tow truck, or make minor repairs and/or wait for assistance.

APD works closely with over 40 local wrecker companies to service these needs. The program is currently managed by APD. Each company that participates in the program is required to be licensed and each tow truck driver passes a background check to receive a City Wrecker License. The tow companies are subject to monthly and quarterly compliance checks by APD.

## 2.6 DISPATCH

The Rotational Towing and TIMS programs are managed by APD Emergency Communications. Currently, APD has approximately 179 employees whose duties may include dispatching. In both programs, an APD Officer contacts APD Emergency Communications via radio to request a wrecker. For Rotational Towing, APD Emergency Communications maintains a successive tow rotation list in which the next approved towing company is contacted for dispatch. APD Emergency Communications contacts these companies in successive order until a company agrees to carry out the tow. Tow companies are assigned to the list based on the geographical location of the vehicle storage facility lot utilized (north or south). For TIMS, APD Emergency Communications contacts the first available wrecker in the closest zone.

## 3.0 **Contractor Responsibilities for this new contract**

The duties listed below are the duties and requirements for the new contract and may or may not be current duties or responsibilities provided by APD.

The successful offeror, hereinafter referred to as "Contractor" shall provide all office space, storage capacity, vehicle processing area(s), equipment, facilities, communications and personnel necessary to perform all functions specified in this scope of work. It shall be the business decision of the Contractor to determine if they shall own, rent, lease, subcontract, etc. any office space, storage capacity, vehicle processing area(s), equipment, facilities, communications, and/or personnel necessary to perform all functions specified in this

scope of work. If the Contractor chooses to utilize subcontractors for this scope of work, it is the responsibility of the Contractor to negotiate any payments or reimbursements directly to the subcontractor.

The following words and terms, when used in this RFP will have the following meanings, unless the context clearly shows otherwise:

CONSENT TOW means a tow of a motor vehicle initiated by the owner or operator of the vehicle or by a person who has possession, custody, or control of the vehicle. The term does not include a tow of a motor vehicle initiated by a peace officer investigating a traffic accident or a traffic incident that involves the vehicle.

NON-CONSENT TOW means a tow that is not a consent tow.

### 3.1 AUTOMATED MANAGED SYSTEM

The Contractor shall provide automated web-based systems capable of dispatch and inventory that is presently in use by your company in State, County, or City Municipalities with over 500,000 individuals within their jurisdiction. The system shall allow multiple users within the Austin Police Department to access the information simultaneously.

- A. The system shall be able to send and receive data through multiple communication channels as needed including, but not limited to, computer and phone.
- B. The system shall be an encrypted secure system that allows multiple security levels for multiple users.
- C. The system should be able to track and verify location and time utilizing a real time Global Positioning System (GPS) system. This will enable the Contractor and the City to track vehicles and wreckers while in service.
- D. The system should provide real time location and tracking of tow trucks and shall be viewable by APD through the contracted vendor's website application.
- E. The system should include an easy to use navigation type website. This website shall be fully functioning at the time of proposal submission and provide vehicle owners with access to information regarding the balance due on their vehicle, the location of their vehicle, and any other pertinent information necessary for reclaiming possession of their vehicle.
- F. The system shall be able to dispatch tow trucks on a rotation basis to locations as requested by APD should rotational towing be included in the proposal.
- G. The system shall dispatch tow request immediately upon receipt of pick-up order via the communication system.
- H. The system shall be able to select the next tow truck for dispatch on the rotation list, if the primary tow truck is unable to meet the required timeframe should rotational towing be included in the proposal.
- I. The system shall be able to locate towed vehicles by any of the following criteria: 1) vehicle identification number, 2) incident report number, 3) license plate number, or 4) vehicle owner's name.
- J. The system shall be able to produce reports which include at a minimum the quantity of tows performed and duration of days towed vehicles stay in impound. Please include in proposal response all the types of reports the system is capable of producing.
- K. Although Private Property Impounds are not part of this new contract, the system shall be able to manage the reporting of Private Property Impounds within the City of Austin. These impounds shall be reported by the vehicle storage facility to the police department of the municipality from which the vehicle was towed within two (2) hours of receiving the vehicle at any facility. The Contractor shall act on behalf of APD and be responsible for managing the reporting of this data and providing a secure website and phone number for APD and vehicle owner access. These are impounds of vehicles from private properties in accordance with applicable State of Texas statutes, rules and regulations including, but not limited to: Texas Occupations Code, Texas Administrative Code, Texas Transportation Code, and City of Austin Code of Ordinances. This Notification of Vehicle Removal shall include:
  - 1. the name of the towing company;
  - 2. the date, time and location of the removal;

3. the physical description, license number with state, and vehicle identification number of the vehicle removed;
4. the name of the tow truck operator who performed the removal; and
5. the storage location of the vehicle.

Additional reporting required shall be further defined in below Section 3.14 titled Reports.

### 3.2 DISPATCH CENTER

Contractor shall provide and maintain a facility to be used to house dispatch personnel. The dispatch center shall be located within the United States, and the size shall accommodate all required personnel and equipment capable of handling the volume listed in Section 2. Background above. The dispatch center shall be operational twenty-four (24) hours per day, seven (7) days per week, and three hundred sixty-five (365) days a year. Per the statement above, it is acceptable that the dispatch center be located out of the corporate city limits of Austin.

When APD requests a tow truck, the dispatch center shall be able to communicate with APD officers, APD Emergency Communications, and tow truck operators by the most effective and efficient means possible. Contractor should utilize a real-time GPS or other navigation system to manage and deploy tow truck fleet. The GPS or navigation system should be available on all wreckers utilized under this contract, including subcontractors. The Contractor and their subcontractors will need to negotiate the details of the GPS or navigation system including ownership, cost, and any other details regarding the GPS or navigation system. The dispatch center shall be able to administer the six categories of towing requests:

- A. Collision Request (Accident Scene Tow – Driver Designated) – The driver of a vehicle involved in a collision requests a specific towing company. The dispatch center shall assist the driver in contacting the requested company.
- B. Collision Rotation (Accident Scene Tow – Rotation List) – The driver of a vehicle involved in a collision has no wrecker preference. The dispatch center shall follow the Rotational Towing guidelines listed below.
- C. Service Request (Disabled Vehicle Tow – Driver Designated) – A disabled vehicle not involved in a collision and the driver requests a specific towing company. The dispatch center shall assist the driver in contacting the requested company.
- D. Service Rotation (Disabled Vehicle Tow – Rotation List) – A disabled vehicle not involved in collisions and the driver has no preference of towing company. The dispatch center shall follow the Rotational Towing guidelines listed below.
- E. Impound Towing – A vehicle to be removed that is evidence in a criminal offence, abandoned, junked or deemed a nuisance. It is towed to a designated vehicle storage facility. The dispatch center shall assign tow trucks to meet the required response times listed below.
- F. Zone Towing – The dispatch center shall assign tow trucks to zones which are designated by the Chief of Police to assist in clearing the roadways. The dispatch center shall follow the Rotational Towing guidelines listed below.

### 3.3 VEHICLE TOWING AND RESPONSE TIMES

The contractor shall be required to provide or subcontract to provide all equipment, facilities, and personnel necessary to tow, impound, release and collect fees for the following:

- A. Abandoned Vehicle Tows: Pick-up orders for abandoned vehicles will be issued to the Contractor daily, Monday through Friday, except holidays observed by the City of Austin. The Contractor shall respond to pick-up orders for abandoned vehicles within twenty-four (24) hours after the pick-up order is issued.
- B. Junked or Nuisance Vehicle Tows: Notification of pending pick-up orders for junked or nuisance vehicles will be given to the Contractor not less than twenty-four hours prior to execution of the actual order as such time is designated in the actual order. Executable pick-up orders for towing of junked or nuisance vehicles shall be requested by the on-site APD Police Officer. The Contractor shall respond to these tow request within forty-five (45) minutes, Monday through Friday, except holidays observed by the City of Austin.

- C. Accident, Disabled Vehicle Scene, and Impound Tows: APD shall issue requests for authorized tows from the site of an accident or a disabled vehicle. The Contractor or their subcontractor should arrive at the scene within twenty (20) minutes after receiving and accepting notification from APD, twenty-four (24) hours a day, seven (7) days a week.
- D. Other Tows: Contractor shall move anything capable of being moved, pulled, pushed or operated on a roadway. The item may not be a vehicle according to the transportation code. For example, it may be a mobile home that has been abandoned on a roadway. These items shall be moved by a wrecker or tractor and transported to a City property or other designated location. If APD deems necessary, a police escort will be provided to escort the hazard. Contractor shall describe in their proposal the capability to provide other tows and response times.
- E. Traffic Incident Management Services (TIMS) Tows: For the TIMS towing program (described below), APD proposes the Contractor arrive on the scene within ten (10) minutes after receiving and accepting notification. Contractor may suggest other response times in the proposal as TIMS response time is included in the Evaluation Factors under System Concept and Solutions Proposed.

### 3.4 TOWING PROGRAMS

APD prefers the following programs be managed as outlined below. However, the Contractor shall describe in their proposal any alternative programs which would achieve APD's goal as outlined in section 1.0 Purpose.

- A. Rotational Towing: The City of Austin Purchasing Office has worked with the Small Minority Business Resource Department (SMBR) to determine that at the release of this solicitation that no goals are appropriate. Additionally, at this time there are no MBE, WBE, or DBE firms certified with the City of Austin in the scopes identified in this solicitation, however, if subcontracting opportunities are identified after the contract award the M/WBE Procurement Ordinance will apply.

Contractor shall establish and maintain a rotation list of towing companies that are available to perform tows from an accident scene or from the scene of a disabled vehicle as requested by an APD Officer. Contractor shall maintain a separate list of towing companies for each zone as these zones are established by the Chief of Police. The zones currently established are North and South. The Contractor shall assign each tow truck on the rotation list to the corresponding weight categories of the vehicle to be towed. The current weight categories are: Light (Class A) – vehicles less than 10,000 lbs., Medium (Class B) – vehicles 10,000 lbs. to less than 26,000 lbs., and Heavy (Class C) – vehicles greater than 26,000 lbs. Contractor shall use the lists to assign towing companies to perform these non-consent tows as requested by any Officer of APD. Impound tows shall be taken to the APD impound facility. The Contractor shall call the towing company whose name appears at the beginning of the non-consent tow rotation list for the category of tow truck required at the scene. If the first towing company contacted is unable to send a tow truck, the Contractor shall continue to call towing companies in the order in which they appear on the list until a towing company on the list responds. After the Contractor calls a company whose name appears on the non-consent tow rotation list, the towing company's name shall be moved to the bottom of the list. Should a towing company on the list be called to a consent tow, the Contractor may not change the order in which that towing company's name appears on the non-consent towing rotation list.

1. The towing companies currently on APD's Non-Consent Tow Rotation list should be given the opportunity by the Contractor to enter into an agreement with the Contractor to provide rotational towing services. Upon contract award, APD will provide the Contractor with the current list of towing companies. Evaluation points under Section 0600 Proposal Preparation Instructions and Evaluation Factors, 5.B.i.6. will be given to Contractor's who include a signed statement in their proposal that they will utilize **ALL** towing companies on APD's Non-Consent Tow Rotation list.

2. Contractor may enter into agreements with additional towing companies which meet all equipment and personnel licensing and permitting applicable to the United States, State of Texas and City of Austin statutes, ordinances, rules and regulations governing tow trucks and tow truck operators. This includes, but is not limited to the: Texas Occupations Code, Texas Administrative Code, Texas Transportation Code; City of Austin Code of Ordinances, and all applicable towing rules including any updates or changes as they occur or are implemented.
  3. Wreckers shall mark their vehicles with their own required licensing information.
  4. Contractor may remove a towing company from the list if the company fails to comply with all equipment and personnel licensing and permitting applicable to the United States, State of Texas and City of Austin statutes, ordinances, rules and regulations governing tow trucks and tow truck operators. This includes, but is not limited to the: Texas Occupations Code, Texas Administrative Code, Texas Transportation Code; City of Austin Code of Ordinances, and all applicable towing rules. The City will report to the Contractor any towing company on the list which is in violation of these rules. To be included in the list, the towing company shall:
    - a) maintain a 24-hour towing service seven days a week;
    - b) be able to immediately advise the Contractor of the availability of the company's tow truck;
    - c) have communication between the company's tow truck and the Dispatch Center;
    - d) have a minimum of two tow trucks.
- B. Traffic Incident Management Services (TIMS): Contractor shall have a system to schedule tow trucks to clear the major roadways of IH-35, MoPac Expressway, and Hwy 183 during peak traffic hours and special events as declared by the Austin Chief of Police. The vehicle shall be towed out of the right-of-way or hazardous area at no cost.
1. Peak traffic hours are defined as Monday through Friday, 6:00 am – 9:00 am and 4:00 pm – 7:00 pm, except holidays observed by the City of Austin.
  2. APD proposes the tow truck arrive at the scene within ten (10) minutes after receiving and accepting notification.
  3. The towing company is prohibited from charging for removal of a vehicle from the right-of-way and may only charge a fee if the Citizen consents with the towing company to tow their vehicle.
  4. The removal location is subject to any applicable towing rules regarding consent and non-consent tows included in, but not limited to the Texas Occupations Code, Texas Administrative Code, Texas Transportation Code; City of Austin Code of Ordinances.
  5. TIMS zones are established by the Austin Chief of Police and are subject to change as deemed necessary. The current TIMS zones are:
    - Zone 1: IH-35 south at City limits to the river (Town/Ladybird Lake)
    - Zone 2: IH-35 at the river (Town/Ladybird Lake) north to Hwy 290
    - Zone 3: Currently inactive
    - Zone 4: Hwy 290 north to IH-35 to City limits
    - Zone 5: Research (Hwy 183) at IH-35 north to City limits
    - Zone 6: Currently inactive
    - Zone 7: Mopac (Loop 1) at 35th Street north to City limits
    - Zone 8: Mopac (Loop 1) at 35th Street south to City limits

### 3.5 WRECKER EQUIPMENT, SERVICE AND TRAINING

The Contractor shall describe in their proposal the types and quantity of wreckers and equipment that will be utilized to accomplish this service.

- A. Wreckers shall meet all equipment and personnel licensing and permitting applicable to the United States, State of Texas and City of Austin statutes, ordinances, rules and regulations governing tow trucks and tow truck operators. This may include, but is not limited to the: Texas Occupations Code, Texas Administrative Code, Texas Transportation Code; Texas Department of Licensing and Regulation, City of Austin Code of Ordinances, and all applicable towing rules. Contractor shall submit with proposal documentation a copy of required licenses and permits.

- B. Contractor shall have a means of providing reliable communication among all wreckers and impound dispatch location. This communication shall be capable of providing information throughout all areas within the jurisdiction of Austin, Texas and the surrounding area. The contractor shall maintain the required communication equipment for traffic incident management in each vehicle used for police impounds.
- C. Contractor shall provide tow truck operators fully capable of performing APD designated Class C (heavy duty) towing. The Class C operators may be divided into two separate groups:
1. The Simple Class C Tow. An example of this would be a tractor trailer involved in a minor collision involving another vehicle and there is not a significant amount of damage or debris field. An APD Officer will make the determination if the call is a simple class C tow.
  2. The Incident Management Class C Tow. An example of this incident scene is one or more tractor trailers involved in a collision and/or there is significant damage and debris, as determined by APD or Austin Fire Department personnel. These operators shall obtain certified training from Miller Industries, WreckMaster, or a similar APD approved certification program in Incident Management scenes and additional equipment use.
    - a) The training should include at a minimum:
      1. Truck and equipment capacities,
      2. Attachments of heavy duty vehicles,
      3. Rigging,
      4. Vehicle placement,
      5. Recovery formulas,
      6. Preparation for towing,
      7. Weather conditions,
      8. Knowledge of blood Borne pathogens,
      9. Customer relations on the scene,
      10. Fire potential and working with fire departments,
      11. Proper maintenance of snatch blocks,
      12. Air cushion recovery,
      13. Hydraulic recovery,
      14. Scene assessment,
      15. Unloading,
      16. HAZMAT awareness,
      17. EPA awareness,
      18. Knowledge drug and alcohol regulations,
      19. Incident management, and
      20. Documentation procedures
    - b) Contractors and/or Sub-Contractors shall have the following additional equipment immediately accessible:
      1. One (1) 60 ton rotator
      2. Two (2) 50 ton heavy duty wrecker
      3. One (1) medium duty wrecker
      4. Two (2) heavy slide tandem axles
      5. One (1) lowboy trailer
      6. One (1) truck tractor tandem axle
      7. One (1) Landoll or City approved trailer
      8. Four (4) light duty slides
      9. One (1) skid steer tractor with attachments
      10. One (1) wheel loader/forklift capable of operating in rough terrain (rubber tires)
      11. One (1) 48' enclosed trailer
      12. One (1) 48' reefer
      13. Twenty (20) absorbent bags
      14. Four (4) recovery barrels open
      15. Four (4) recovery barrels closed
      16. Four (4) overpack drums
      17. Shrink wrap



## 18. Banding equipment (steel or poly)

### 3.6 FEE COLLECTION

Towing Contractor Payment and Fees: Contractor shall collect, when a vehicle is released, all monies, including applicable taxes, due against the vehicle. The City Council annually establishes and approves the towing rate fee schedule. The current Fiscal Year 2013-2014 maximum rates can be found at: [https://assets.austintexas.gov/budget/13-14/downloads/fy14\\_approved\\_volume\\_II.pdf](https://assets.austintexas.gov/budget/13-14/downloads/fy14_approved_volume_II.pdf) on page 569. The maximum rates do not currently include fees related to the potential services provided by the Contractor pursuant to this RFP. Contractor shall not charge a fee, or assess a fee for a service which is inconsistent with the most current guidelines established by the Austin City Council in the Austin City Code Chapter 13-6; (<https://library.municode.com/index.aspx?clientId=15302>) and all other applicable rules/laws and other fees applicable to tow trucks. Contractor shall accept the following forms of payment:

- A. ACH/Electronic Checks
- B. Cash (US Currency)
- C. Credit Cards (At a minimum Visa and MasterCard. American Express, Discover, or other are optional and at the City and Contractors discretion)
- D. Debit Cards

### 3.7 VEHICLE STORAGE FACILITY

The Contractor shall provide, or subcontract to provide a facility (or facilities) for impounding APD authorized tows and providing certain no-cost services to APD. This section establishes the minimum criteria for the vehicle storage facility.

- A. All impound storage facility(facilities) shall meet all licensing and inspections requirements according to the State of Texas statutes, rules and regulations, which may include, but are not limited to the: Texas Occupations Code, Texas Administrative Code, Texas Transportation Code, City of Austin Code of Ordinances, and all applicable vehicle storage rules.
- B. Facility (Facilities) proposed shall be located within the corporate limits of the City of Austin.
- C. Number of facilities: The total number of impound facilities shall not exceed four (4) in addition to a facility designated for Abandoned/Junked vehicles. Multiple facilities shall be located on opposite sides of the city. For example if more than one facility is offered the condition would be to designate a facility north and the second lot shall be south. If a facility is designated east, the second shall be west. Impounded vehicles shall be taken to the closest facility of where the tow occurs to facilitate owner retrieval.
- D. Facility (Facilities) shall be accessible and not contain barriers limiting their use by people with disabilities and shall be in compliance with all ADA requirements.
- E. Storage Capacity: The facility (facilities) proposed should hold approximately 1,200 vehicles combined, with a minimum 275 of these spaces designated for vehicles held to be auctioned. The facility (facilities) proposed for the storage of all vehicles shall be fenced and secured. The fence(s) should be at least eight (8) foot high chain link with razor wire on top and shall be secured with a locking gate. Contractor may propose alternative to chain link with razor wire fencing. Final decision as to acceptability of the alternate solution shall rest with the City. Contractor shall describe their facility (facilities) and the capacity to accommodate the combined volume of vehicles required to be impounded and held for auction. Additionally, the offeror shall describe the ability to provide additional vehicle storage facilities, personnel and equipment as needed to meet the potential for increase over the term of the resulting contract.
- F. Vehicles shall be stored in a manner that shall prevent vandalism, minimize the possibility of damage, and facilitate removal.

- G. Documentation of Vehicle Condition: The Contractor shall record the condition of each vehicle brought in for impound. A digital/video camera shall be used to take photos of all four (4) sides of the vehicle. Digital images documenting the condition of each vehicle shall be suitably indexed and maintained for one year after the release or sale at auction of title vehicle. If directed by the City, the time period for retention of digital images may be extended beyond the above-stated time if there is pending or ongoing litigation involving the vehicle, and in accordance with applicable law.
- H. Release of Vehicles: Contractor shall maintain a staffed office and business telephone twenty-four (24) hours per day, seven (7) days per week for owners of vehicles to call and obtain information about their impounded vehicle and pick up vehicle. The telephone number shall be listed on the APD website and on the Internet.
- I. Vehicle Release Areas: The contractor shall provide indoor, well-lighted, climate controlled customer service areas at the vehicle storage area. The customer service areas shall be in compliance with Americans with Disability Act (ADA) requirements for accessibility.
- J. Landscaping: The outside area adjacent to and in front of the entrance to office spaces and reception areas should be landscaped to provide a reasonably pleasant visual appearance to people coming in and out of the building.
- K. Restrooms: The Contractor shall provide restrooms in a sound state of maintenance, cleanliness, and repair, adequate to accommodate personnel who work at the storage facility, and accessible to individuals that may be conducting short-term business at the facility. Restrooms shall conform to standards for public facilities as specified in the ADA.
- L. Janitorial upkeep and pest control: Contractor should provide for daily janitorial service in the offices, reception, and restroom areas. No janitorial service will be required inside of the Vehicle Processing Facility, as defined in Section 3.10, No Cost Services Provided to the City, Item F & G herein, but trash shall be picked up from a designated container outside of the building on a regular basis. Pest control shall be provided in all buildings and adjacent work areas on an as-needed basis.
- M. Security System: The Vehicle Storage Facility entrances shall be designed in a manner that prevents unauthorized persons from entering the premises. Vehicle Storage Facilities shall be equipped with security lighting that adequately illuminates the facility. Contractor personnel shall escort claimants to vehicles being released.
- N. Entrance Signs: The Contractor shall provide signs at the main entrance of each Vehicle Storage Facility. An illuminated sign that is readable in day or night conditions from the road at 150 feet viewing distance shall have the name of the storage facility and the information that this is the "Authorized City of Austin Impound Facility." Additionally, the sign shall include all information required by State of Texas rules and regulations related to Vehicle Storage Facilities. Other information displayed on the sign shall include brief references to method of payment accepted for vehicle release. This additional information shall be easily readable in day or night conditions from 75 feet viewing distance.
- O. Customer Service Area Signs: Contractor shall provide signs inside and outside of the customer service areas of the Vehicle Storage Facilities, in compliance with any State of Texas regulations pertaining to such placements. These signs shall display readable information regarding requirements, fees, and accepted methods of payment for release of vehicles from impound, as well as any other information that may be required by applicable State of Texas regulations.
- P. Business Hours: Contractor shall maintain a business office at each Vehicle Storage Facility, which shall be staffed and open for business 24 hours a day, seven (7) days a week, including weekends and all holidays.
- Q. Customer Relations: Contractor shall provide complete, professional, and courteous service to vehicle owners in all forms of communication, which includes but is not limited to email, telephone and in person.

- R. Copy Machine Access: Contractor shall provide a copy machine at each Vehicle Storage Facility for vehicle owners to use, free of charge, to make copies of documents required for the release of their vehicles.

### 3.8 AUCTION OF UNCLAIMED VEHICLES

Any vehicles deemed impounded by APD that are unclaimed shall be sold at auction in accordance with applicable State of Texas statutes, rules and regulations including, but not limited to: Texas Occupations Code, Texas Administrative Code, Texas Transportation Code; City of Austin Code of Ordinances, and all applicable vehicle storage rules. APD will provide a vehicle identification number (VIN) check for each unclaimed vehicle.

- A. Contractor shall conduct the auction of Impounded Vehicles as authorized by law. Contractor shall subcontract and pay an auction firm that shall provide a professional auctioneer and one clerical person. Auctioneer conducting the auctions shall be licensed by the State of Texas as required by the Texas Department of Licensing and Regulation.
- B. APD will conduct the auction of Abandoned, Junked or Nuisance Vehicles. The auctioneer subcontracted by the Contractor shall provide auctioneer services.
- C. APD will be responsible for all mail notification (and/or newspaper advertisement) required by law to the owner/lien holder of Abandoned, Junked or Nuisance Vehicles.
- D. The Contractor shall be responsible for all mail notification (and/or newspaper advertisement) required to the owner/lien holder of Impounded Vehicles.
- E. The Contractor shall be responsible for providing the City the frequency of their auction schedule and it shall be included in the proposal response.

### 3.9 CUSTOMER SERVICE

The Contractor shall oversee customer service and relations for all aspects of this towing management program. Contractor shall provide APD a list of standard operating procedures for customer service operations and include detail of complaint procedure management as part of their proposal. Specific procedures regarding the handling of escalated complaints should also be included in the proposal.

### 3.10 NO COST SERVICES PROVIDED TO THE CITY

Contractor shall provide certain no cost services to the City. Only APD Sergeants and above rank officers who identify themselves as so may authorize a no cost haul and storage. The no cost hauls are for a very specific type of tow, minimally used, and to be discussed upon contract award and will not in any way replace the current Fleet Services towing contract for City owned vehicles. APD Patrolmen are not authorized to initiate these no cost services. It shall be the responsibility of the Contractor to keep adequate record of the APD personnel who authorize the service. They are as follows:

- A. Hauls of non-City owned vehicles and City-owned vehicles to a designated City site or Contractor's storage site as directed by APD. Some of these hauls may require the use of dollies or slide trucks. Some may require medium duty or heavy duty wreckers depending on weight.
- B. Any vehicles towed or items stored on APD instructions, shall be released without towing, storage, impound or notification fee upon authorization from the Chief of Police or his designee.
- C. Vehicles, parts, etc., impounded that are stolen, found property, or evidence shall be stored at no expense to the City or the owner as long as a hold is in effect. Storage fees begin to accrue the day after the hold is dropped by the City. Vehicles, parts, etc. that are stolen property shall be released after towing and any storage fees are paid.
- D. Excluded Storage: Contractor shall be required to tow drug cars and seized cars to an APD facility (location is within the city limits of Austin and shall be disclosed upon award of contract).

These cars are hereby defined as vehicles seized by the APD Narcotics Division as a narcotic seizure (vehicles used for transporting narcotics are taken away from their owners and not returned). The contractor shall not be required to provide storage of these vehicles. Approximately 5 -10 vehicles are towed monthly under this requirement.

- E. Towing of storage of vehicles for Forensic: Contractor shall be required to tow vehicles being processed as evidence to the APD Forensic Processing Facility. These tows will be requested by the APD Supervisor or Detective responsible for title code of offense related to the forensic hold.
- F. APD Vehicle Processing Facility of Criminal Evidence: shall be a fully enclosed workspace of sufficient size to store and process up to three (3) standard size automobiles at the same time. Specific design options and features of the Vehicle Processing Facility will be determined in consultation between the selected Contractor and the APD Contract Manager. However, the enclosed area should be approximately 75' by 30' and the Contractor shall include at least the following features:
  - 1. Secured and controlled access to the building by APD only.
  - 2. Two (2) large bay doors with automatic garage door opener for each.
  - 3. Concrete floor.
  - 4. One standard entryway door for foot traffic.
  - 5. 11' to 15' insulated ceiling.
  - 6. A built-in work station in each of the four bay areas along the 75-foot wall, to include storage above and below the counter.
  - 7. Adequate fluorescent lighting, which shall provide an even distribution of light throughout the entire interior of the facility.
  - 8. Electrical outlets: Four (4) dedicated circuits, 20 amps each. Five (5) 4-plug electrical receptacles evenly spaced along back wall; three (3) 2-plug electrical outlets evenly spaced between counter and cabinets.
  - 9. Adequate climate control (heating and cooling) to maintain a comfortable indoor working environment.
  - 10. Built-in air exchange system, built to code requirements, to include explosion-proof exhaust fans for venting exhaust and chemical fumes.
  - 11. Sink area.
  - 12. Safety eyewash station meeting ANSI standard Z358.1-19-90.
  - 13. Bathroom.
  - 14. Pit in last bay area or an automatic vehicle lift for undercarriage inspections with safety railing separating pit area from other bays and foot-traffic areas. Tire guides, six (6) inches in height, shall be installed on the sides of the pit to safely guide vehicles being moved over the pit.
  - 15. Air compressor with one quick disconnect per bay.
  - 16. Retractable fluorescent droplights from the ceiling above each bay area (four total), and two retractable lights in the pit area with safety cover.
- G. APD Vehicle Storage Area for the APD Vehicle Processing Facility: shall be adjacent to or in close proximity to Vehicle Processing Facility and shall include:
  - 1. An area that shall accommodate 10-20 vehicles.
  - 2. An area that is covered and paved with asphalt or concrete.
  - 3. A fenced and secured area. The fences shall be eight feet in height, chain link, with locking gate(s), and with razor wire affixed to the top of the fencing around the circumference of the storage area. Contractor-proposed alternative to chain link fencing will be considered and are subject to the approval of the City.
  - 4. Secured and controlled access to the storage area by authorized APD Forensic personnel only.
  - 5. Contractor shall provide at no cost towing of vehicles involved in criminal activity or have suspected criminal evidence, to and from the Vehicle Storage Area and to and from the Vehicle Processing Facility. This towing shall be conducted within one (1) hour of notification, twenty four hours a day, seven days a week, except City holiday. .

- H. Utilities for APD Vehicle Processing Facility: APD will be responsible for paying for telephone, electrical, alarm monitoring, water, and sewer service.
- I. Maintenance for area around the APD Vehicle Processing Facility: Contractor shall be responsible for paying for trash pick-up and pest control.

### 3.11 REASONABLE RULES AND REGULATIONS

The Chief of Police or designee retains the right to establish Reasonable Rules and Regulations to ensure the efficient operation of conditions established under this contract. These Rules and Regulations will be developed after contract award and may be updated periodically during the term of this agreement. These Rules and Regulations should be agreeable to both parties, but Contractor shall be aware that the Rules and Regulations are under constant scrutiny and revision by both the City and the State of Texas and are, therefore, subject to update and/or revision. Contractor shall be expected to comply with all updates and/or revisions of Rules and Regulations.

### 3.12 UNIFORMS FOR CONTRACTOR PERSONNEL

Contractor's drivers, subcontractors, and other personnel who might reasonably be expected to be observed regularly by the public while performing their job functions shall wear their company's uniform, including shirts and work pants appropriate for the job they are performing. The shirt shall bear their own company name and the individual's full name. All Contractor employees and subcontractors shall be required to begin each shift wearing a clean uniform. Please provide your company's uniform policy within your proposal.

### 3.13 REVENUES TO THE CITY

- A. Contractor shall pay the City a referral fee on a monthly basis for the exclusive right to provide wrecker (towing of abandoned, junked, or nuisance vehicles and authorized impounds), impound, storage, and release services. The referral fee may be a percentage of the gross contract collections. Contractor shall submit with their proposal the percentage of gross contract collections or an alternative plan that will be paid to the city. Gross contract collections shall include:
  - 1. All towing fees collected for abandoned, junked or nuisance vehicles and/or impounded vehicles, whether redeemed or sold at auction;
  - 2. All fully prepared for transport fees collected on abandoned, junked or nuisance vehicles and /or impounded vehicles;
  - 3. All preservation fees collected for abandoned, junked or nuisance vehicles and/or impounded vehicles, whether redeemed or sold at auction;
  - 4. All notification fees collected on impounded vehicles, whether redeemed or sold at auction;
  - 5. All additional fees collected for clearing debris, winching, wait time, work time exceptional labor and specialized equipment for abandoned, junked, or nuisance vehicles and/or impounded vehicles, whether redeemed or sold at auction;
  - 6. All impound fees collected for abandoned, junked or nuisance vehicles and/or impounded vehicles whether redeemed or sold at auction;
  - 7. All storage fees collected for abandoned, junked or nuisance vehicles and/or impounded vehicles, whether redeemed or sold at auction, and;
  - 8. All income collected at public auction of abandoned, junked, nuisance vehicles and/or impounded vehicles.
- B. Exceptions: Sales taxes collected for remittance to the Texas Comptroller shall not be treated as part of Gross Contract Collections and shall be retained by Contractor
- C. The terms and conditions of the contract shall remain in full force and effect, however, the amount paid for the referral fee to the City shall be subject to a re-opener clause every twelve (12) months which shall reflect the value of Contractor's payments received from vehicle owners as indicated in the number of vehicles being impounded in the storage facility. The purpose of the

re-opener clause is to verify data demonstrating the appropriateness of the referral fee paid the City and to make adjustments as necessary.

- D. Payment to the City of Austin is due by the tenth (10) calendar day of each month. In the event this day falls on a weekend or holiday then payment shall be due on the next working day. It is preferable that payments be made by electronic funds transfer to the City of Austin account or by any means as directed by the City.

### 3.14 REPORTS

Reports shall be available electronically via automated system and downloadable in Microsoft Excel, Portable Document Format (PDF), or other format as agreed to by both parties.

#### A. Accounting and Financial Records

1. Collection of fees from the owners, agents and any persons having rightful possession of the vehicles hauled, impounded and/or stored in accordance with this contract is the responsibility of the Contractor. Contractor shall maintain detailed records of such receipts and these records shall be available to the City for inspection. All records concerning impounds shall be kept for a minimum of three (3) years from the transaction date or longer if requested by the City if there is active or threatened litigation.
2. All records of the Contractor pertaining to impound and all transactions involving this contract shall be open to inspection by the City during normal business hours.
3. Contractor shall establish and maintain during the term of this agreement separate records and accounts, including a separate bank account, relating to the receipts of the impound and wrecker services rendered under this contract. These records and accounts shall be subject to the examination and audit by the City at any time.
4. The Contractor shall submit a detailed monthly report to the City showing, at a minimum, the revenue-producing tow and associated fees and the total gross revenue collected for the month and amount due to the City. Report is due no later than the tenth (10) of each month.
5. Contractor shall submit a financial statement ninety (90) days prior to the yearly anniversary of the contract and any subsequent contractual extensions. The financial statement shall include an income statement, balance sheet and statement of changes of financial position. Annual statements shall be prepared in accordance with generally accepted accounting principles and reviewed by a Certified Public Accountant of the Contractor's choice. All financial statement and reports shall be submitted to the responsible COA Department Financial Services Division.
6. Contractor shall provide and the City of Austin, at their discretion, shall be able to obtain electronic financial and accounting reports of the contracted vendors auctioneer. The auctioneer reports shall provide car vehicle Identification Number (VIN), amount for which vehicle sold at auction, and copy of purchaser signature.

#### B. Abandoned, Junk and Nuisance Vehicles - Contractor shall provide a report weekly to APD and include, at a minimum, all of the following information:

1. Make, model (including year, color, body style),
2. Vehicle Identification number (VIN)
3. License plate number (LPN)
4. Date and time of each abandoned vehicle impound
5. Date and time each vehicle redeemed, including VIN and LPN
6. Owner's name, driver's license number, date of birth, address, and phone number,
7. Reference to videotape index and footage, as appropriate to document any damage to and condition of the vehicle, Location where the vehicle was picked up,
8. Date (year, month, and day) and time of impoundment,
9. Employee number of clerks performing impounds, and release functions, date (year, month, and day) and time of release.
10. Employee number of impounding tow truck operator.

11. Employee number of officer requesting the impound, or employee number of abandoned vehicle unit employee requesting impoundment of Abandoned/Junked vehicle.
  12. Complete description of all unsecured property in the vehicle (to include passenger and cargo spaces).
  13. Vehicles sold at auction, including auction date, buyer's name, and sale price.
  14. Vehicles scheduled for sale at next auction, and auction date.
  15. Offense report or accident number.
  16. List of vehicles sold at auction, including to whom and sales price.
  17. List of vehicles to be sold at next auction, auction date
- C. Customer Service Reports – Contractor shall provide APD with a monthly detailed report listing any escalated customer complaints and the status of the resolution.
- D. Rotational Towing List – At any time, APD may request a list of towing companies included on the Non-Consent Tow Rotation List maintained by the Contractor.
- E. Towing Program Reports - Contractor shall provide monthly reports to APD for the TIMS and Rotational towing programs. Information requirements shall be agreed upon by the Contractor and APD, but shall include at a minimum:
1. Wrecker(s) reporting to the scene
  2. Employee number(s) reporting to the scene
  3. Date and time for acceptance of tows
  4. Date and time for arrival on scene
  5. Date and time for departure of scene/removal from the right of way
  6. Vehicle make, model (including year, color, body style)
  7. Vehicle Identification Number (VIN)
  8. License Plate (LPN)

### 3.15 COMPREHENSIVE IMPOUND AND RELEASE DATABASE

Contractor shall maintain a comprehensive impound and release database. The database shall include data on numbers of tows by type (impound, abandoned, junked and no-charge) that can be downloaded for user-selected time periods, and shall track total storage times per vehicle. The database shall be configured to allow sorting on variables including, at a minimum, the impounded or abandoned/ junked status of vehicles, dates of arrival, release, auction, and identifying information on vehicles or owners. A monthly report shall be provided to the City by the tenth (10) of each month in a generally accepted format such as Excel or Comma-separated values (CSV) as directed by the City upon contract award and execution. The database shall include at least the following information for each vehicle processed:

1. Make, model (including year, color, body style),
2. Vehicle Identification Number (VIN),
3. License Plate Number (LPN),
4. Owner's name, driver's license number, date of birth, address, and phone number
5. Reference to videotape index and footage, as appropriate to document any damage to and condition of the vehicle,
6. Location where the vehicle was picked up,
7. Date (year, month, and day) and time of impoundment,
8. Employee number of clerks performing impounds and release functions, date (year, month, and day) and time of release
9. Employee number of impounding tow truck operator
10. Employee number of officer requesting the impound, or employee number of abandoned vehicle unit employee requesting impoundment of Abandoned/Junked vehicle
11. Complete description of all unsecured property in the vehicle (to include passenger and cargo spaces)
12. Vehicles sold at auction, including auction date, buyer's name, and sale price,
13. Vehicles scheduled for sale at next auction, and auction date,



14. Offense report or incident number.
15. Comprehensive Database shall integrate with the automated system.

### 3.16 CONTRACT CLOSEOUT PROCEDURES

Contractor shall provide the City with an itemized written inventory of all vehicles which remain unclaimed as of the expiration of this contract. The inventory shall be provided no later than thirty (30) day after the expiration date of the contract. The inventory shall include the date of impoundment, vehicle year, make/model, description of the vehicle and name and address of legal owner of record.

## 4.0 Contractor Minimum Requirements

Each proposal shall meet the minimum requirements specified below in order to be considered as an eligible Contractor. By submitting a proposal in response to this RFP, Contractor warrants and represents that it meets or exceeds all minimum requirements. The minimum requirements are:

### A. Financial Requirements

1. Contractor shall demonstrate in its proposal that it has the financial strength and resources to fully execute the project described in its proposal in a timely manner. Contractor shall enclose copies of its most recent annual financial statement, a copy of its Articles of Incorporation, Partnership By-Laws, and if not a Texas company, a Certificate of the Secretary of State of Texas showing that the Contractor is authorized to do business in Texas. If the Contractor is an affiliate of another entity, and audited financial statements are prepared only on a consolidated basis, then the Contractor shall enclose a copy of the most recent consolidated audited financial statements.
2. If the Contractor's proposal includes interim or permanent third party financing, then detailed information concerning the amount and source of such financing shall be included in the proposal.
3. Contractor shall promptly provide upon request any additional financial information as requested by the City. Failure of a Contractor to provide additional information or to demonstrate adequate financial resources shall be grounds for rejection of a Proposal.

### B. Contractor shall demonstrate that it has a minimum of five (5) years in business.

### C. Contractor shall allow APD department to conduct criminal background checks on all officers or owners of the business entity.

### D. Respondents shall provide their Dun & Bradstreet Business Information Report with their proposal.

If any of the above requirements cannot be met, the City may condition its acceptance of any proposal upon the execution of corporate or personal financial and performance guarantees in a form and substance acceptable to the City.

## 5.0 Deliverables/Milestones

Deliverables/ Milestones	Description	Timeline (due/completion date, reference date, or frequency)	Performance Measure/ Acceptance Criteria	Contract Reference/ Section
Automated Management System	Provide a web-based dispatch and inventory system	90 Days	Delivery to City	3.1
Dispatch Center	Provide a staffed facility for dispatching	90 Days	City Written Approval	3.2

Transition Plan/Implementation Plan	Provide a detailed schedule of transition from the existing vendor	30 Days	City Written Approval	
TIMS and Rotational Towing Programs	Provide implementation schedule of towing programs	30 Days	City Written Approval	3.4
List of Partners/Agreements	Provide a list of towing companies participating in the program	90 Days	City Written Approval	3.4
Equipment List or Access to Equipment Information	Provide a list of towing equipment or equipment resources (if applicable)	90 Days	City Written Approval	3.5
Acquiring Vehicle Storage Facility	Provide a towing storage facility	90 Days	City Review and Acceptance	3.7
APD Vehicle Storage Facility	Provide a towing storage facility accessible only to APD	90 Days	City Review and Acceptance	3.10
Rules and Regulations	Develop with APD	At beginning of contract	City Written Approval	3.11
Reporting	Provide a revenue report	Monthly	Delivery to City	3.14
Reporting	Provide a financial statement	Yearly	Delivery to City	3.14
Reporting	Provide an auctioneer report	On demand	Delivery to City	3.14
Reporting	Provide an abandoned/junk and nuisance report	Weekly	Delivery to City	3.14
Reporting	Provide a customer service report	Monthly	Delivery to City	3.14
Reporting	Provide a list of towing companies on the rotation program	On demand	Delivery to City	3.14
Reporting	Provide towing rotation program reports	Monthly	Deliver to City	3.14
Fully Operational	All services effective	120 Days	Delivery to City	

**CITY OF AUSTIN**  
**AUSTIN POLICE DEPARTMENT TOWING, DISPATCH AND IMPOUND SERVICES**  
**PROPOSAL PREPARATION INSTRUCTIONS AND EVALUATION FACTORS**  
**SOLICITATION NUMBER: EAD0119REBID**

**1. PROPOSAL FORMAT**

Prefacing the proposal, the Proposer shall provide an Executive Summary of three (3) pages or less, which gives in brief, concise terms, a summation of the proposal. **The original paper copy of the proposal shall be on standard 8 1/2" X 11" double sided paper, unbound, with no staples or paperclips. Six separate electronic copies of the proposal on a CD or flash drive in PDF format must also be submitted in the same envelope with the original proposal clearly marked with each Offeror's information. The CD's or flash drives will not be returned.** The proposal itself shall be organized in the following format and informational sequence with tabs for each section:

- A. **Part I - Business Organization:** State full name and address of your organization and identify parent company if you are a subsidiary. Specify the branch office or other subordinate element which will perform, or assist in performing, work herein. Indicate whether you operate as a partnership, corporation, or individual. Include the State in which incorporated or licensed to operate.
- B. **Part II - System Concept and Solution:** Define in detail your understanding of the requirement presented in the Scope of Work of this request for proposal and your system solution. Provide all details as required in the Scope of Work and any additional information you deem necessary to evaluate your proposal.
  - i. Describe in detail how your firm can best provide a total management of dispatch, towing, and impound services for the Austin Police Department. Detail the plan to meet response times for towing programs; describe automated management systems, dispatch center, and vehicle storage facility(s).
  - ii. Proposers may describe in detail alternative solutions to the RFP.
  - iii. Describe schedule for implementation of the required work.
- C. **Part III - Program:** Describe your technical plan for accomplishing required work. Include such time-related displays, graphs, and charts as necessary to show tasks, sub-tasks, milestones, and decision points related to the Scope of Work and your plan for accomplishment. **Proposers shall provide responses to each section in the RFP from Section 0500 Scope of Work Section 3.1 through 3.16 in the same order as the RFP listing the heading and their response. Describe in detail how the proposed products or services meet or exceed the requirements. Proposers must explain any exception or deviation from the requirements.** When applicable, specifically indicate:
  - i. A description of your work program by tasks in response to each section in the RFP from Section 0500 Scope of Work Sections 3.1 through 3.16. Detail the steps you will take in performing the services.
  - ii. The technical factors that will be considered in section above, and the depth to which each will be treated.
- D. **Part IV - Project Management Structure:** Provide a general explanation and chart which specifies project leadership and reporting responsibilities; and interface the team with City project management and team personnel. If use of subcontractors is proposed, identify their placement in the primary management structure, and provide internal management description for each subcontractor.
- E. **Part V - Completed Projects of a Similar Size and Scope:** Describe only relevant projects completed for personnel who will be actively engaged in the project. Do not include corporate experience unless personnel assigned to this project actively participated. Do not include experience

**CITY OF AUSTIN**  
**AUSTIN POLICE DEPARTMENT TOWING, DISPATCH AND IMPOUND SERVICES**  
**PROPOSAL PREPARATION INSTRUCTIONS AND EVALUATION FACTORS**  
**SOLICITATION NUMBER: EAD0119REBID**

prior to 2004. Additionally, supply the information below in your proposal for which prior projects were accomplished.

Provide information for the three largest Police Department clients that your company held a contract with for Total Management of Dispatch, Towing, and Impound Services for in the last three years.

2010-2011: Total Number of Police Department Clients:

Name of largest client:

Population of City/County, etc.:

Contact Person:

Title:

Phone Number:

Email Address:

2011-2012: Total Number of Police Department Clients:

Name of largest client:

Population of City/County, etc.:

Contact Person:

Title:

Phone Number:

Email Address:

2012-2013: Total Number of Police Department Clients:

Name largest of client:

Population of City/County, etc.:

Contact Person:

Title:

Phone Number:

Email Address:

- F. **Part VI - Personnel:** Include names and qualifications of all professional personnel who will be assigned to this project. State the primary work assigned to each person and the percentage of time each person will devote to this work. Identify key persons by name and title. Include any current certifications your personnel or firm has from Miller Industries or WreckMaster with your proposal.

- G. **Part VII - Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying:**

- i. On November 10, 2011, the Austin City Council adopted Ordinance No. 20111110-052 amending Chapter 2-7, Article 6 of the City Code relating to Anti-Lobbying and Procurement. The policy defined in this Code applies to Solicitations for goods and/or services requiring City Council approval under City Charter Article VII, Section 15 (Purchase Procedures). During the No-Contact Period, Offerors or potential Offerors are prohibited from making a representation to anyone other than the Authorized Contact Person in the Solicitation as the contact for questions and comments regarding the Solicitation.
- ii. If during the No-Contact Period an Offeror makes a representation to anyone other than the Authorized Contact Person for the Solicitation, the Offeror's Offer is disqualified from further consideration except as permitted in the Ordinance.
- iii. If a Respondent has been disqualified under this article more than two times in a sixty (60) month period, the Purchasing Officer shall debar the Offeror from doing business with the

**CITY OF AUSTIN**  
**AUSTIN POLICE DEPARTMENT TOWING, DISPATCH AND IMPOUND SERVICES**  
**PROPOSAL PREPARATION INSTRUCTIONS AND EVALUATION FACTORS**  
**SOLICITATION NUMBER: EAD0119REBID**

City for a period not to exceed three (3) years, provided the Respondent is given written notice and a hearing in advance of the debarment.

- iv. The City requires Offerors submitting Offers on this Solicitation to provide a signed Section 0810, Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying Affidavit certifying that the Offeror has not in any way directly or indirectly made representations to anyone other than the Authorized Contact Person during the No-Contact Period as defined in the Ordinance. The text of the City Ordinance is posted on the Internet at: <http://www.ci.austin.tx.us/edims/document.cfm?id=161145>

- H. **Part VIII - Proposal Acceptance Period:** All proposals are valid for a period of one hundred and eighty (180) calendar days subsequent to the RFP closing date unless a longer acceptance period is offered in the proposal

- I. **Part IX - Proprietary Information:** All material submitted to the City becomes public property and is subject to the Texas Open Records Act upon receipt. If a Proposer does not desire proprietary information in the proposal to be disclosed, each page must be identified and marked proprietary at time of submittal. The City will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available upon public request.

- J. **Part X - Authorized Negotiator:** Include name, address, and telephone number of person in your organization authorized to negotiate Contract terms and render binding decisions on Contract matters.

- K. **Part XI – Towing/Storage Rates:** Provide the rates for towing and vehicles storage to be charged under this contract. Rates may not exceed those allowed by City ordinance.

- L. **Part XII – Auction Fees:** Provide fee structure for auction process.

- M. **Part XIII – Compliance with Applicable Rules and Regulations:** A statement of your compliance with all applicable rules and regulations of Federal, State and Local governing entities. The Proposer must state his compliance with terms of this Request for Proposal (RFP).

2. **TRAVEL:**

IF TRAVEL IS REQUIRED, CONTRACTOR'S TRAVEL EXPENSES MUST BE INCLUDED IN THE OVERALL PROJECT COST. TRAVEL MAY NOT BE BILLED DIRECTLY TO THE CITY.

3. **EXCEPTIONS:**

Be advised that exceptions to any portion of this Solicitation including terms and conditions may jeopardize acceptance of the Proposal. The Proposer must clearly indicate the exceptions taken and include a full explanation as a separate attachment to the Proposal. The failure to identify exceptions or proposed changes with a full explanation will constitute acceptance by the Proposer of the Solicitation as proposed by the City. The City reserves the right to reject a proposal containing exceptions, additions, qualifications or conditions not called for in the solicitation.

4. **PROPOSAL PREPARATION COSTS:**

**CITY OF AUSTIN**  
**AUSTIN POLICE DEPARTMENT TOWING, DISPATCH AND IMPOUND SERVICES**  
**PROPOSAL PREPARATION INSTRUCTIONS AND EVALUATION FACTORS**  
**SOLICITATION NUMBER: EAD0119REBID**

All costs directly or indirectly related to preparation of a response to the RFP or any oral presentation required to supplement and/or clarify a proposal which may be required by the City shall be the sole responsibility of the Proposer.

**5. EVALUATION FACTORS AND AWARD**

A. **Competitive Selection:** This procurement will comply with applicable City Policy. The successful Proposer will be selected by the City on a rational basis. Evaluation factors outlined in Paragraph B below shall be applied to all eligible, responsive Proposers in comparing proposals and selecting the Best Offeror. Award of a Contract may be made without discussion with Proposers after proposals are received. Proposals should, therefore, be submitted on the most favorable terms.

B. **Evaluation Factors:**

i. 100 points. All proposals will be evaluated based on the following criteria and rankings.

- (1) System Concept and Solutions Proposed: automation of communication, response times, equipment, operating schedule, customer service, personnel training, and sustainability measures (as pertaining to the environment). **35 points**
- (2) Revenue to the City: the percentage of gross contract collections that will be paid directly to the City. The proposer with the highest revenue to the City is awarded the maximum points; other proposers are awarded points on a pro-rated basis. **25 points**
- (3) Demonstrated Capability to Perform Services: previous projects of similar size and scope, location of storage facility(s), qualifications, number of proposed personnel, reporting capabilities, and number of subcontracted local towing companies. **10 points**
- (4) Schedule for implementation: start-up date and implementation schedule. **10 points**
- (5) Fees to be charged for services per the fee schedule. **5 points**
- (6) Utilization of Rotational Towing List as approved by APD. Points in this section are all or nothing. If the statement is provided from the Contract per Section 0500 Scope of Work 3.4.A.1 then all points will be given. If the statement is not included or doesn't state the use of all companies on APD's Non-Consent Tow Rotation list the points will not be given. **15 points**

**Proposer must include their most recent Dun & Bradstreet Business Information Report for the City to review to determine financial viability and stability.**

ii. Interviews, Optional. Interviews may be conducted at the discretion of the City. The City will score proposals based on the items listed above. The City may select a "short list" of Proposers based on those scores. Short listed Proposers may be invited for interviews with the City. The City reserves the right to rescore short listed proposals as a result of the interviews and to make an award recommendation on that basis. The City reserves the right to negotiate the actual contract scope of work and cost after submission. **Maximum 25 points.**

**Section 0700: Reference Sheet**

Please include the following information:

Responding Company Name TEGSCO, LLC ("AutoReturn")

1. Company's Name City of Kansas City, Missouri - Neighborhood and Housing Services; Tow Services Section  
Name and Title of Contact Nathan Pare', Division Manager - Tow Services Section  
Present Address 7750 E Front Street  
City, State, Zip Code Kansas City, Missouri 64120  
Telephone Number ( 816 ) 513-0692 Fax Number ( 816 ) 231-2796  
Email Address nate.pare@kcmo.org
  
2. Company's Name City and County of San Francisco, California - Municipal Transportation Agency - SFPD  
Name and Title of Contact Steven Lee, Manager - Financial Contracts and Services  
Present Address One South Van Ness Avenue, 7th Floor  
City, State, Zip Code San Francisco, California 94103  
Telephone Number ( 415 ) 701-4592 Fax Number ( 415 ) 701-4736  
Email Address steven.lee@sfmta.com
  
3. Company's Name Consolidated City of Indianapolis and Marion County - Department of Code Enforcement  
Name and Title of Contact Patrick O'Connor, Manager of Contracts  
Present Address 1200 Madison Avenue, Suite 100  
City, State, Zip Code Indianapolis, Indiana 46225  
Telephone Number ( 317 ) 327-5596 Fax Number ( 317 ) 327-8973  
Email Address patrick.o'connor@indy.gov



4. Company's Name City and County of San Diego, California - San Diego Police Department  
Name and Title of Contact Ronald Villa, Deputy Chief Operating Officer - Internal Operations  
Present Address 1401 Broadway  
City, State, Zip Code San Diego, California 92101  
Telephone Number ( 619 ) 236-7795 Fax Number ( 619 ) 533-5210  
Email Address rhvilla@pd.sandiego.gov

5. Company's Name Baltimore County, Maryland - Baltimore County Police Department  
Name and Title of Contact Sergeant Mark Crump, Police Sergeant  
Present Address 1747 Merrit Boulevard  
City, State, Zip Code Baltimore, Maryland 21222  
Telephone Number ( 410 ) 887-7320 Fax Number ( 410 ) 887-7316  
Email Address mcrump@baltimorecountymd.gov

**City of Austin, Texas  
Section 0800  
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE  
NON-DISCRIMINATION CERTIFICATION**

**City of Austin, Texas  
Human Rights Commission**

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

**Sec. 4-2 Discriminatory Employment Practices Prohibited.** As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B)
- (1) Not to engage in any discriminatory employment practice defined in this chapter.
  - (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
  - (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
  - (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
  - (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
  - (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
  - (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

**City of Austin  
Minimum Standard Non-Discrimination in Employment Policy:**

*As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.*

*The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion,*

*recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.*

*Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.*

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

**Sanctions:**

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

**Term:**

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.




John B. Wicker  
CEO, TEGSCO, LLC ("AutoReturn")  
Dated: August 29, 2014

**City of Austin, Texas**  
**Section 0805**  
**NON-SUSPENSION OR DEBARMENT CERTIFICATION**

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

The Offeror hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.



John B. Wicker  
CEO, TEGSCO, LLC ("AutoReturn")  
Dated: August 29, 2014

**CITY OF AUSTIN, TEXAS  
SECTION 0810  
NON-COLLUSION,  
NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING CERTIFICATION**

The term “**Offeror**”, as used herein, includes the individual or business entity submitting the Offer and for the purpose of this Affidavit includes the directors, officers, partners, managers, members, principals, owners, agents, representatives, employees, other parties in interest of the Offeror, and anyone or any entity acting for or on behalf of the Offeror, including a subcontractor in connection with this Offer.

1. **Anti-Collusion Statement.** The Offeror has not in any way directly or indirectly:

- a. colluded, conspired, or agreed with any other person, firm, corporation, Offeror or potential Offeror to the amount of this Offer or the terms or conditions of this Offer.
- b. paid or agreed to pay any other person, firm, corporation Offeror or potential Offeror any money or anything of value in return for assistance in procuring or attempting to procure a contract or in return for establishing the prices in the attached Offer or the Offer of any other Offeror.

2. **Preparation of Solicitation and Contract Documents.** The Offeror has not received any compensation or a promise of compensation for participating in the preparation or development of the underlying Solicitation or Contract documents. In addition, the Offeror has not otherwise participated in the preparation or development of the underlying Solicitation or Contract documents, except to the extent of any comments or questions and responses in the solicitation process, which are available to all Offerors, so as to have an unfair advantage over other Offerors, provided that the Offeror may have provided relevant product or process information to a consultant in the normal course of its business.

3. **Participation in Decision Making Process.** The Offeror has not participated in the evaluation of Offers or other decision making process for this Solicitation, and, if Offeror is awarded a Contract hereunder, no individual, agent, representative, consultant, subcontractor, or subconsultant associated with Offeror, who may have been involved in the evaluation or other decision making process for this Solicitation, will have any direct or indirect financial interest in the Contract, provided that the Offeror may have provided relevant product or process information to a consultant in the normal course of its business.

4. **Present Knowledge.** Offeror is not presently aware of any potential or actual conflicts of interest regarding this Solicitation, which either enabled Offeror to obtain an advantage over other Offerors or would prevent Offeror from advancing the best interests of the City in the course of the performance of the Contract.

5. **City Code.** As provided in Sections 2-7-61 through 2-7-65 of the City Code, no individual with a substantial interest in Offeror is a City official or employee or is related to any City official or employee within the first or second degree of consanguinity or affinity.

6. **Chapter 176 Conflict of Interest Disclosure.** In accordance with Chapter 176 of the Texas Local Government Code, the Offeror:

- a. does not have an employment or other business relationship with any local government officer of the City or a family member of that officer that results in the officer or family member receiving taxable income;




- b. has not given a local government officer of the City one or more gifts, other than gifts of food, lodging, transportation, or entertainment accepted as a guest, that have an aggregate value of more than \$250 in the twelve month period preceding the date the officer becomes aware of the execution of the Contract or that OWNER is considering doing business with the Offeror.
- c. as required by Chapter 176 of the Texas Local Government Code, Offeror must file a Conflict of Interest Questionnaire with the Office of the City Clerk no later than 5:00 P.M. on the seventh (7th) business day after the commencement of contract discussions or negotiations with the City or the submission of an Offer, or other writing related to a potential Contract with the City. The questionnaire is available on line at the following website for the City Clerk:

<http://www.austintexas.gov/department/conflict-interest-questionnaire>

There are statutory penalties for failure to comply with Chapter 176.

If the Offeror cannot affirmatively swear and subscribe to the forgoing statements, the Offeror shall provide a detailed written explanation with any solicitation responses on separate pages to be annexed hereto.

**7. Anti-Lobbying Ordinance.** As set forth in the Solicitation Instructions, Section 0200, paragraph 7N, between the date that the Solicitation was issued and the date of full execution of the Contract, Offeror has not made and will not make a representation to a City official or to a City employee, other than the Authorized Contact Person for the Solicitation, except as permitted by the Ordinance.



John B. Wicker  
CEO, TEGSCO, LLC ("AutoReturn")  
Dated: August 29, 2014

**Section 0835: Non-Resident Bidder Provisions**

Company Name TEGSCO, LLC ("AutoReturn")

- A. Bidder must answer the following questions in accordance with Vernon's Texas Statutes and Codes Annotated Government Code 2252.002, as amended:

Is the Bidder that is making and submitting this Bid a "Resident Bidder" or a "non-resident Bidder"?

Answer: Non-resident Bidder

(1) Texas Resident Bidder- A Bidder whose principle place of business is in Texas and includes a Contractor whose ultimate parent company or majority owner has its principal place of business in Texas.

(2) Nonresident Bidder- A Bidder who is not a Texas Resident Bidder.

- B. If the Bidder is a "Nonresident Bidder" does the state, in which the Nonresident Bidder's principal place of business is located, have a law requiring a Nonresident Bidder of that state to bid a certain amount or percentage under the Bid of a Resident Bidder of that state in order for the nonresident Bidder of that state to be awarded a Contract on such bid in said state?

Answer: For certain contracts Which State: California

- C. If the answer to Question B is "yes", then what amount or percentage must a Texas Resident Bidder bid under the bid price of a Resident Bidder of that state in order to be awarded a Contract on such bid in said state?

Answer: See [http://www.window.state.tx.us/procurement/pub/manual/Resident\\_Bidder\\_Preference\\_List\\_02-09-07.pdf](http://www.window.state.tx.us/procurement/pub/manual/Resident_Bidder_Preference_List_02-09-07.pdf)

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)  
PROCUREMENT PROGRAM  
NO GOALS FORM**

SOLICITATION NUMBER: EAD0119REBID

PROJECT NAME: Total Management of Dispatch, Towing, and Impound Services for the Austin Police Department

**The City of Austin has determined that no goals are appropriate for this project.** Even though no goals have been established for this solicitation, the Bidder/Proposer is required to comply with the City's MBE/WBE Procurement Program, if areas of subcontracting are identified.

If any service is needed to perform the Contract and the Bidder/Proposer does not perform the service with its own workforce or if supplies or materials are required and the Bidder/Proposer does not have the supplies or materials in its inventory, the Bidder/Proposer shall contact the Small and Minority Business Resources Department (SMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Bidder/Proposer must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

**Will subcontractors or sub-consultants or suppliers be used to perform portions of this Contract?**

No \_\_\_\_\_ If no, please sign the No Goals Form and submit it with your Bid/Proposal in a sealed envelope.

Yes  X  If yes, please contact SMBR to obtain further instructions and an availability list and perform Good Faith Efforts. Complete and submit the No Goals Form and the No Goals Utilization Plan with your Bid/Proposal in a sealed envelope.

After Contract award, if your firm subcontracts any portion of the Contract, it is a requirement to complete Good Faith Efforts and the No Goals Utilization Plan, listing any subcontractor, subconsultant, or supplier. Return the completed Plan to the Project Manager or the Contract Manager.

I understand that even though no goals have been established, I must comply with the City's MBE/WBE Procurement Program if subcontracting areas are identified. I agree that this No Goals Form and No Goals Utilization Plan shall become a part of my Contract with the City of Austin.

TEGSCO, LLC

Company Name

John B. Wicker, CEO and President

Name and Title of Authorized Representative (Print or Type)



Signature

August 29, 2014

Date



**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)  
PROCUREMENT PROGRAM  
NO GOALS UTILIZATION PLAN**  
(Please duplicate as needed)

SOLICITATION NUMBER: EAD0119REBID

PROJECT NAME: Total Management of Dispatch, Towing, and Impound Services for the Austin Police Department

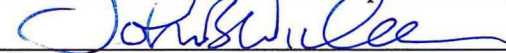
**PRIME CONTRACTOR/CONSULTANT COMPANY INFORMATION**

Name of Contractor/Consultant	TEGSCO, LLC ("AutoReturn")		
Address	450 7th Street		
City, State Zip	San Francisco, CA 94103		
Phone	415-575-2355	Fax Number	415-575-2375
Name of Contact Person	John B. Wicker		
Is company City certified?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> MBE/WBE Joint Venture <input type="checkbox"/>		

I certify that the information included in this No Goals Utilization Plan is true and complete to the best of my knowledge and belief. I further understand and agree that the information in this document shall become part of my Contract with the City of Austin.

John B. Wicker, CEO and President

Name and Title of Authorized Representative (Print or Type)



Signature

August 29, 2014

Date

Provide a list of all proposed subcontractors/subconsultants/suppliers that will be used in the performance of this Contract. **Attach Good Faith Efforts documentation if non MBE/WBE firms will be used.**

<b>Sub-Contractor/Consultant</b>	See Attached List(s).
City of Austin Certified	MBE <input type="checkbox"/> WBE <input type="checkbox"/> Ethnic/Gender Code: <input type="checkbox"/> NON-CERTIFIED
Vendor ID Code	See Attached List(s).
Contact Person	See Attached List(s). Phone Number: See Attached List(s).
Amount of Subcontract	\$ See Attached List(s).
List commodity codes & description of services	See Attached List(s).

<b>Sub-Contractor/Consultant</b>	See Attached List(s).
City of Austin Certified	MBE <input type="checkbox"/> WBE <input type="checkbox"/> Ethnic/Gender Code: <input type="checkbox"/> NON-CERTIFIED
Vendor ID Code	See Attached List(s).
Contact Person	See Attached List(s). Phone Number: See Attached List(s).
Amount of Subcontract	\$ See Attached List(s).
List commodity codes & description of services	See Attached List(s).

**FOR SMALL AND MINORITY BUSINESS RESOURCES DEPARTMENT USE ONLY:**

Having reviewed this plan, I acknowledge that the proposer (HAS) or (HAS NOT) complied with City Code Chapter 2-9A/B/C/D, as amended.

Reviewing Counselor \_\_\_\_\_ Date \_\_\_\_\_ Director/Deputy Director \_\_\_\_\_ Date \_\_\_\_\_

Sub-Contractor/Consultant	City of Austin Certified	Vendor ID Code	Contact Person	Phone Number	Amount of Subcontract	List of Commodity codes & description of services
A Excellence Wrecker Service, Inc. / Hook & Go Active	Non-Certified	Not available	Jose Ortega	512-634-7656	To be determined	96890 - Vehicle Towing And Storage
A&A Wrecker North	Non-Certified	V00000922785	Juan & Tasha Mora	512-670-7578	To be determined	96890 - Vehicle Towing And Storage
Armada Towing / ATX-VIP Towing	Non-Certified	V00000922854	Avery Zepeda	512-251-8884	To be determined	96890 - Vehicle Towing And Storage
A-Tex Towing	Non-Certified	Not available	Danny Peana	512-383-5900	To be determined	96890 - Vehicle Towing And Storage
Aus-Tex Towing	Non-Certified	VS0000015678	Henry Jones	512-836-7443	To be determined	96890 - Vehicle Towing And Storage
Austin Express Towing	Non-Certified	Not available	Monica Tamayo	512-420-8446	To be determined	96890 - Vehicle Towing And Storage
Aviles & Gabes Wrecker Service, Inc. / Aviles Transport & Wrecker Service	Non-Certified	Not available	Gabriel Aviles	512-341-0911	To be determined	96890 - Vehicle Towing And Storage
Big A Towing	Non-Certified	Not available	George & Jackie	512-873-7899	To be determined	96890 - Vehicle Towing And Storage
Bullet Towing	Non-Certified	V00000915095	Rick Pope	512-206-6657	To be determined	96890 - Vehicle Towing And Storage
CE Cedar Park Wrecker Service	Non-Certified	V00000922802	Joey (Joe) Smith	512-267-5100	To be determined	96890 - Vehicle Towing And Storage
Customz Wrecker Service	Non-Certified	Not available	Ibrahim Nasser	512-433-0212	To be determined	96890 - Vehicle Towing And Storage
Denver's Towing	Non-Certified	V00000906627	Denver Kokel	512-990-2114	To be determined	96890 - Vehicle Towing And Storage
Elite Towing	Non-Certified	Not available	Kym Schmoyer	512-238-8082	To be determined	96890 - Vehicle Towing And Storage
Finger Towing Service	Non-Certified	VS0000013280	Reid Courtney	512-832-0877	To be determined	96890 - Vehicle Towing And Storage
Harpers Towing	Non-Certified	Not available	Steve Harper	512-443-1000	To be determined	96890 - Vehicle Towing And Storage
Interstate Chaparral Towing Inc.	Non-Certified	V00000922549	Debbie Haycock	512-835-6580	To be determined	96890 - Vehicle Towing And Storage
J&J Towing	Non-Certified	Not available	Justin Perez	512-462-2244	To be determined	96890 - Vehicle Towing And Storage
Lakeside Towing	Non-Certified	V00000908120	Billy Davenport	512-266-8620	To be determined	96890 - Vehicle Towing And Storage
Lone Star Towing	Non-Certified	V00000922730	James Kokel	512-832-9555	To be determined	96890 - Vehicle Towing And Storage
Merino's Auto & Towing	Non-Certified	Not available	Elaina Merino	512-450-2414	To be determined	96890 - Vehicle Towing And Storage
Milligan's Towing	Non-Certified	Not available	Doug Milligan	512-563-1641	To be determined	96890 - Vehicle Towing And Storage
Mr East Towing	Non-Certified	Not available	Robert East	512-926-7374	To be determined	96890 - Vehicle Towing And Storage
Pinkies American Towing	Non-Certified	VS0000033860	Russell Waggoner	512-233-4869	To be determined	96890 - Vehicle Towing And Storage
Pronto Towing	Non-Certified	VC0000102326	Not Available	512-836-8329	To be determined	96890 - Vehicle Towing And Storage
Quick Towing	Non-Certified	V00000908453	Nick Moncus	512-905-0202	To be determined	96890 - Vehicle Towing And Storage
Reliant Towing	Non-Certified	Not available	Mark & Chris	512-363-5900	To be determined	96890 - Vehicle Towing And Storage
Round-Up Towing / Texan Towing North / South	Non-Certified	Not available	Mike Dodson	512-448-4000 / 512-288-8626	To be determined	96890 - Vehicle Towing And Storage
Rocha's Towing	Non-Certified	MJV7155260 / V00000901569	Jamie Rocha	512-280-2642	To be determined	96890 - Vehicle Towing And Storage
Southside Wrecker	Non-Certified	SOU4324750	Sherry/James New	512-441-7094	To be determined	96890 - Vehicle Towing And Storage
Special Automotive Services, Inc.	Non-Certified	Not available	Jesus Rocha	512-243-1015	To be determined	96890 - Vehicle Towing And Storage
Tri City Towing / Wrecker Service	Non-Certified	Not available	Natash/Mark Chapla	512-800-3018	To be determined	96890 - Vehicle Towing And Storage



**ADDENDUM**

**REQUEST FOR PROPOSAL (RFP)**

**PURCHASING OFFICE  
CITY OF AUSTIN, TEXAS**

**RFP No.:** EAD0119REBID

**Addendum No:** 1

**Date of Addendum:** August 19, 2014

- 1.0 This addendum is incorporating the following question, answer, and information to the above-referenced RFP.

Call in information for the non-mandatory pre-proposal meeting on August 21, 2014, from 9:00 AM – 10:00 AM.

Telephone Number: 512-974-9300

Conferee Code: 090571

Confirmation No: 2558

The following question was posed by one or more Vendor's in writing.

**Q:** Are evaluation points being given for being within the city limits of Austin? Is it acceptable to be in the ETJ?

**A:** Per Section 0500 Scope of Work, section 3.7.B., "Facility (Facilities) proposed shall be located within the corporate limits of the City of Austin." Therefore, it is a minimum requirement that the Vehicle Storage Facility be located in the corporate limits, not the ETJ.

- 2.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

APPROVED BY:

  
Erin D'Vincent, Senior Buyer Specialist  
Purchasing Office

8/19/14  
Date

ACKNOWLEDGED BY:

TEGSCO, LLC ("AutoReturn")

Vendor Name

  
Authorized Signature

8/29/14  
Date

**RETURN A COPY OF THIS ADDENDUM**  
**to the Purchasing Office, City of Austin, Texas with your offer.**  
**Failure to do so may constitute grounds for rejection of your offer.**





**ADDENDUM**

**REQUEST FOR PROPOSAL (RFP)**

**PURCHASING OFFICE  
CITY OF AUSTIN, TEXAS**

**RFP No.: EAD0119REBID**

**Addendum No: 2**

**Date of Addendum: August 22, 2014**

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- 1.0 This addendum is incorporating the following questions and answers to the above-referenced RFP asked during the pre-proposal meeting or via email.
- 1.1 Q: Is the vehicle storage facility that receives vehicles from rotation list calls required to meet the same requirements listed in Section 0500 Scope of Work, 3.7?  
A: No.
- 1.2 Q: Is Workers Compensation insurance required under this contract?  
A: Yes. Please reference Section 0400 Supplemental Purchasing Provisions, 2.B. for specific coverage requirements.
- 1.3 Q: Can the Contractor propose any tow fee they want?  
A: All fees shall be in line with the information under Section 0500 Scope of Work 3.6.
- 1.4 Q: Do all employees of the Contractor and Subcontractors have to have training on anything besides Class C tows?  
A: No. The only current requirement of the contract is for Simple Class C Tow's under Section 0500 Scope of Work 3.5.C.
- 1.5 Q: Can the Contractor awarded the contract require additional training for Subcontractors not listed in the Scope of Work?  
A: Yes. This is for the Contractor and Subcontractor to work out.
- 1.6 Q: Is the City requiring they get a percentage of the dispatch fee?  
A: It is not a requirement, however, if a company chooses to give the City a percentage of the fee it will be evaluated under Section 0600 Proposal Preparation Instructions and Evaluation Factors, 5.B.i.2.
- 1.7 Q: How will the City evaluate the estimated revenue to the City if it's listed as a percentage?  
A: It will be based off of numbers from the previous fiscal years.
- 1.8 Q: Can a company submit a proposal themselves and choose to be a Subcontractor for another company's proposal?  
A: Yes.
- 1.9 Q: Can a Subcontractor be in multiple proposal responses?  
A: Yes.
- 1.10 Q: Can the proposal due date be extended?  
A: Due to the strict timeline, no.

- 1.11 Q: Will the awarded Contractor be given a list of APD Officers on duty?  
A: No.
- 1.12 Q: How long after the contract is awarded does the Contractor have to be ready to perform?  
A: See Section 0500 Scope of Work 5.0.
- 1.13 Q: Is the City requiring Workforce Security Clearance and Identification on the Contactor or Subcontractors?  
A: No.
- 1.14 Q: Is the City requiring the Contractor have 13 acres of property, like the current Contractor has?  
A: No. Section 0500 Scope of Work 3.7 lists the Vehicle Storage Facility requirements and acreage is not listed.
- 1.15 Q: Will a Contractor be given more points if they can exceed the timeframe for the milestones listed?  
A: Yes. Points will be distributed under Section 0600 Proposal Preparation Instructions and Evaluation Factors, 5.B.i.4.
- 1.16 Q: Does the automated management system have to be fully functional at the time the proposal is submitted?  
A: Yes. See Section 0500 Scope of Work, 3.1.
- 1.17 Q: What is the process when this is taken to City Council?  
A: All RFP respondents will be notified approximately two weeks before the Council date with the recommended awardee and the scores from the evaluation matrix.
- 1.18 Q: What is the evaluation process after the proposals have been submitted?  
A: The evaluation team will score the proposals and determine if interviews are necessary. Please see Section 0600 Proposal Preparation Instructions and Evaluation Factors 5.ii. regarding interviews. After the interview process is complete (if the City deemed interviews necessary), the department and Purchasing Office recommend an awardee and write a Request for Council Action (RCA) and bring forward to a City Council meeting.

2.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

APPROVED BY:

  
Erin D. Vincent, Senior Buyer Specialist  
Purchasing Office

8/22/14  
Date

ACKNOWLEDGED BY:

TEGSCO ("Auto Return")  
Vendor Name

  
Authorized Signature

8/29/14  
Date

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## **ADDENDUM**

### **REQUEST FOR PROPOSAL (RFP)**

#### **PURCHASING OFFICE CITY OF AUSTIN, TEXAS**

**RFP No.: EAD0119REBID**

**Addendum No: 2**

**Date of Addendum: August 22, 2014**

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2.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

APPROVED BY:

  
Erin D Vincent, Senior Buyer Specialist  
Purchasing Office

8/22/14  
Date

ACKNOWLEDGED BY:

TEGSCO ('AutoReturn')  
Vendor Name

  
Authorized Signature

8/29/14  
Date

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**TEGSCO, LLC**  
**SECOND AMENDED AND RESTATED**  
**OPERATING AGREEMENT**

**THIS SECOND AMENDED AND RESTATED OPERATING AGREEMENT** (the “**Operating Agreement**”) of **TEGSCO, LLC**, a California limited liability company (the “**Company**”), is made as of the 15<sup>th</sup> day of November, 2004 (the “**Effective Date**”), by and among the members listed on the Unit Register, and amends and restates in its entirety the Amended and Restated Operating Agreement of TEGSCO, LLC, dated March 15, 2004 (the “**First Amended and Restated Operating Agreement**”).

**WHEREAS**, the Company was formed pursuant to the provisions of the Beverly-Killea Limited Liability Company Act (the “**Act**”), upon the filing of the Articles of Organization (the “**Articles**”) with the Secretary of State of the State of California on May 9, 2002; and

**WHEREAS**, the Members now desire to amend and restate the First Amended and Restated Operating Agreement as provided herein;

**NOW, THEREFORE**, in consideration of mutual covenants and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

**ARTICLE I**

**DEFINITIONS**

**1.1 Definitions** The following terms used in this Operating Agreement shall have the following meanings (unless otherwise expressly provided herein):

(a) “**Accounting Period**” shall be (i) the Company’s Fiscal Year if there are no changes in the Members’ respective interests in Company income, gain, loss or deductions during such Fiscal Year except on the first day thereof or (ii) any other period beginning on the first day of a Fiscal Year, or any other day during a Fiscal Year, upon which occurs a change in such respective interests, and ending on the last day of a Fiscal Year, or on the day preceding an earlier day upon which any change in such respective interest shall occur.

(b) “**Act**” shall mean the Beverly-Killea Limited Liability Company Act, as amended.

(c) “**Additional Member**” shall mean any Person who or which is admitted to the Company as an Additional Member pursuant to Article XIII hereof.

(d) “**Adjusted Asset Value**” with respect to any asset shall be the asset’s adjusted basis for federal income tax purposes, except as follows:



(i) (i) The initial Adjusted Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset at the time of contribution, as determined by the contributing Member and the Board of Directors.

(ii) The Adjusted Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Board of Directors, and the resulting unrecognized profit or loss allocated to the Capital Accounts of the Members pursuant to Article XI, as of the following times: (i) the acquisition of an additional interest in the Company by any new or existing Member in exchange for a capital contribution; (ii) the distribution by the Company to a Member of more than a *de minimis* amount of Company assets, unless all Members receive simultaneous distributions of either undivided interests in the distributed property or identical Company assets in proportion to their interests in Company distributions; (iii) the termination of the Company either by expiration of the Company's term or the occurrence of an event of early termination; and (iv) the liquidation of the Company within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g).

(iii) The Adjusted Asset Values of the Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m) and subparagraph (iii) of the definition of "*Net Profits*" and "*Net Losses*" below.

(iv) The Adjusted Asset Value of any Company asset distributed to a Member shall be the gross fair market value of such asset on the date of distribution as determined by the Board of Directors.

(e) "**Adjusted Capital Account,**" with respect to any Member, shall mean the Member's Capital Account as adjusted by the items described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(c), 1.704-2(g)(1), 1.704-2(i)(5) and 1.704-1(b)(2)(ii)(d)(4), (5) and (6) of the Treasury Regulations.

(f) "**Affiliate**" with respect to any Person, shall mean (i) any Person which beneficially holds, directly or indirectly, or otherwise controls, ten percent (10%) or more of such Person's outstanding securities, (ii) any Person, ten percent (10%) or more of which Person's outstanding securities are beneficially held, directly or indirectly, or are otherwise controlled, by such a Person and (iii) any Person, ten percent (10%) or more of which Person's outstanding securities are beneficially held, directly or indirectly, or are otherwise controlled, by a Person described in (i) above.

(g) "**Board of Directors**" shall have the meaning specified in Section 4.1.

(h) "**Capital Account**" as of any given date shall mean the Capital Account of each Member as specified in Section 10.3.

(i) "**Capital Contribution**" shall mean the amount of money and the fair market value of any property contributed to the Company by a Member whenever made net of any liability of such Member assumed by the Company and any liability secured by property

contributed by such Member. Any reference to a capital contribution of a Member shall include the Capital Contribution made by a predecessor holder of any Units held by such Member with respect to such Units.

(j) **“Capital Transactions”** shall mean the dissolution of the Company, a sale of all or substantially all of the Company’s assets, other than sales in the ordinary course of business, and any merger, consolidation, sale of Units or similar transaction or series of transactions, in each case as a result of which the Members will no longer have an interest in the Company or the net assets of the Company are or will be distributed in full to the Members; provided, that a Capital Transaction shall not include a Reincorporation.

(k) **“Code”** shall mean the Internal Revenue Code of 1986, as amended, or corresponding provisions of subsequent superseding federal revenue laws.

(l) **“Company”** shall refer to TEGSCO, LLC.

(m) **“Company Property”** shall mean any tangible and intangible personal property now owned or hereafter acquired by the Company, including, without limitation, all cash, cash equivalents, deposits, accounts receivable, work-in-progress, inventory, equipment, materials, supplies, prototypes, vehicles, real property, fixtures, permits, approvals, licenses, patents, consents, contracts, agreements, applications for permits, approvals, licenses, development rights, development agreements, trade names and warranties, or any other property.

(n) **“Directors”** shall mean the directors designated or elected by the Members pursuant to the terms of this Operating Agreement. For purposes of the Act and for all other purposes, the term “Director” as used in this Operating Agreement shall mean “manager.” Consequently, the parties intend that any restriction on the authority of a Director set forth in this Operating Agreement shall also be read as a restriction on such person’s authority as a manager.

(o) **“Fiscal Year”** shall mean the Company’s fiscal year. The Company’s fiscal year shall be the calendar year.

(p) **“Member”** shall mean each of the Members listed on the Unit Register maintained by the Company, any Additional Member and any Substituted Member which is, as of a given time, a member of the Company.

(q) **“Net Profit or Net Loss”** shall be an amount computed for each Accounting Period as of the last day thereof that is equal to the Company’s taxable income or loss for such Accounting Period, determined under the accrual method of accounting in accordance with Section 703(a) of the Code (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(i) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Net Profit or Net Loss pursuant to this Section 1.1(q) shall be added to such taxable income or loss;

(ii) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i) and not otherwise taken into account in computing Net Profit or Net Loss pursuant to this definition shall be subtracted from such taxable income or loss;

(iii) Gain or loss resulting from any disposition of a Company asset with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Adjusted Asset Value of the asset disposed of rather than its adjusted tax basis; and

(iv) To the extent an adjustment to the adjusted tax basis of any asset is required pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution in kind of Company Property, the amount of such adjustment shall be treated as an item of gain or loss.

(v) If the Adjusted Asset Value of any Company asset is adjusted pursuant to the definition thereof, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset.

(r) **“Operating Agreement”** shall mean this Operating Agreement as originally executed and as amended in accordance with the terms of this Operating Agreement from time to time.

(s) **“Person”** shall mean any individual or corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, unincorporated organization or other entity, including any government or political subdivision or any agency or instrumentality thereof and the heirs, executors, administrators, legal representatives, successors, and permitted assigns of such “Person” where the context so admits.

(t) **“Reincorporation”** shall mean a merger, reorganization or exchange of Units with an entity such that following such transaction, a majority of the equity interests in such entity are held by Members.

(u) **“Substitute Member”** shall mean any Person who or which is admitted to the Company as a Substitute Member pursuant to Articles XII and XIII of this Operating Agreement.

(v) **“Treasury Regulations”** shall mean the Income Tax Regulations, including temporary regulations, promulgated under the Code, as amended from time to time.

(w) **“Units”** shall mean the capital units issued by the Company to its Members which represent each Member’s interest in the Company.

## ARTICLE II

### FORMATION OF COMPANY

**2.1 Formation** On May 9, 2002, the Company was organized as a California limited liability company under and pursuant to the Act.

**2.2 Name** The name of the Company is TEGSCO, LLC.

**2.3 Principal Place of Business** The principal place of business of the Company shall initially be at 450 7<sup>th</sup> Street, San Francisco, CA 94103. The Company may locate its places of business and registered office at any other place or places as the Board of Directors may from time to time deem advisable.

**2.4 Registered Office and Registered Agent** The Company's registered office in the State of California shall be at the office of its registered agent for service of process, and the name and address of its initial registered agent for service of process shall be John Wicker, 450 7<sup>th</sup> Street, San Francisco, CA 94103. The Board of Directors may change the Company's agent for service of process from time to time.

**2.5 Term** The Company's existence commenced May 9, 2002, upon the filing with the Secretary of State of the State of California of the Articles and shall continue until the Company is dissolved in accordance with either the provisions of this Operating Agreement or the Act.

## ARTICLE III

### PURPOSES OF COMPANY

**3.1 Company Purposes** The purpose of the Company is to engage in any lawful act or activity for which a limited liability company may be organized under the laws of the State of California. The Company shall have all powers available to limited liability companies under the Act to make and perform all contracts and to engage in all actions and transactions necessary or advisable to carry out the purposes of the Company.

## ARTICLE IV

### MANAGEMENT OF COMPANY

**4.1 Generally** Except as specifically set forth in this Operating Agreement, the Members hereby delegate all power and authority to manage the business and affairs of the Company to the Directors, who shall act as the managers of the Company subject to and in accordance with the terms of this Operating Agreement (including, without limitation, Section 5.1). Such Directors shall constitute the "Board of Directors" and such term may be used in this Operating Agreement to refer to such Directors. Such term is used for convenience only and is not intended by the parties to confer to the Board of Directors any additional power or authority other than that expressly and specifically conferred pursuant to and in accordance with the terms of this Operating Agreement. Any power not otherwise delegated pursuant to this Operating

Agreement or by the Board of Directors in accordance with the terms of this Operating Agreement shall remain with the Board of Directors.

**4.2 Number of Directors** The number of Directors of the Company shall be currently fixed at seven (7) Directors, who shall initially be [John Wicker, George Hoyem, Robert Reddy, Ty Shipman, Gene Washington, Teresa Wren] and, subject to the terms hereof, St. Cloud shall have the right, but not the obligation, to designate one (1) member of the Board of Directors (the “**St. Cloud Director**”). The number of Directors may be changed from time to time, with the consent of the St. Cloud Director, by (i) Members holding at least two-thirds of the Units or (ii) a unanimous vote of the Directors (then serving as Directors).

**4.3 Tenure, Election and Qualifications** The Directors, except the St. Cloud Director, shall be elected at each meeting of the Members to hold office until such next annual meeting, or as otherwise provided below. Each Director, except the St. Cloud Director, shall serve until the earlier of (i) the election of such Director’s successor, (ii) the removal of such Director in accordance with the terms of this Operating Agreement, (iii) such Director’s resignation or (iv) such Director’s death. Notwithstanding any other provision of this Agreement, in any election of Directors by the Members, there shall be no cumulative voting, and each Member must vote all of his or her Units for a single candidate from the slate of nominees. The persons receiving the greatest number of votes, up to the number of Directors to be elected, shall be deemed elected. The St. Cloud Director shall serve until the earlier of (i) the designation of such Director’s successor by St. Cloud, (ii) the removal of such Director by St. Cloud, (iii) such Director’s resignation, (iv) such Director’s death, or (v) the first date upon which the balance of any obligation owed by the Company to St. Cloud as evidenced by a written promissory note made by the Company in favor of Saint Cloud (the “St. Cloud Note”) is Five Thousand Dollars (\$5,000) or less.

(b) A Director may, but need not, be a Member.

**4.4 Resignation** A Director may resign at any time by giving written notice to the Members. The resignation of a Director shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**4.5 Removal** The entire Board of Directors or any Director may be removed at any time, with or without cause, by the affirmative vote of the Members holding at least two-thirds of the Units; provided that the St. Cloud Director may only be removed with the prior written consent of St. Cloud.

**4.6 Vacancies** Any vacancy occurring in the office of a Director shall be filled by a majority vote of the remaining Directors, though less than a quorum, or by a sole remaining Director; *provided, however*, a vacancy created by the removal of a Director may be filled only by the affirmative vote (or written consent) of Members holding at least two-thirds of the outstanding Units. Notwithstanding the foregoing, any vacancy occurring in the office of the St. Cloud Director may only be filled by St. Cloud.

**4.7 Meetings** Regular meetings of the Board of Directors shall be held at such times, mutually convenient places and dates as determined by the Board of Directors. The officers and other executives of the Company may attend meetings of the Board of Directors with the prior approval of the Board of Directors.

(a) Directors may participate in a meeting through use of conference telephone or similar communication equipment, so long as all Directors participating in such meeting can hear one another. Such participation constitutes presence in person at such meeting.

(b) Special meetings of the Board of Directors for any purpose may be called by (i) the Chief Executive Officer, (ii) any two (2) Directors or (iii) Members holding more than fifty percent (50%) of the Units then outstanding.

(c) Each Director shall receive notice of the date, time and place of all meetings of the Board of Directors at least ten (10) business days (forty-eight (48) hours if given personally or by facsimile, telegraph or electronic mail) before the meeting. Such notice shall be delivered in writing (which may be by facsimile, telegraph or electronic mail) to each Director. Such notice may be given by the Secretary of the Company or by the person or persons who called the meeting. Such notice shall specify the purpose of the meeting. Notice of any meeting of the Board of Directors need not be given to any Director who signs a waiver of notice of such meeting or a consent to holding the meeting, either before or after the meeting, or who attends the meeting without protesting prior to such meeting or at the commencement thereof. All such waivers, consents and approvals shall be filed with the records of the Company.

(d) Meetings of the Board of Directors may be held at any place that has been designated in the notice of the meeting.

(e) Any meeting of the Board of Directors, whether or not a quorum is present, may be adjourned to another time and place by the affirmative vote of a majority of the Directors present. If the meeting is adjourned for more than twenty-four (24) hours, notice of such adjournment to another time or place shall be given prior to the time of the adjourned meeting to the Directors who were not present at the time of the adjournment.

(f) Any action required or permitted to be taken by the Board of Directors may be taken without a meeting of the Board of Directors, if all the Directors individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the corporate records of the Company. Such action by written consent shall have the same force and effect as a unanimous vote of the Directors.

**4.8 Quorum and Transaction of Business** The number of Directors that constitutes a quorum for the transaction of business at a properly noticed meeting of the Board of Directors shall be a simple majority of the number of Directors then in office. Except as required by the Act or as otherwise set forth in this Operating Agreement, every act or decision done or made by at least a simple majority of the Directors present at a meeting duly held and at which a quorum is present shall be the act of the Board of Directors.

**4.9 Directors Have No Exclusive Duty to Company** The Directors shall not be required to manage the Company as their sole and exclusive function, and, subject to Section 7.4,

the Directors may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this Operating Agreement, to share or participate in such other investments or activities of the Directors or to the income or proceeds derived therefrom.

**4.10 Observer** At the election of St. Cloud, St. Cloud may designate an observer to attend all meetings of the Board and committees thereof (an “**Observer**”). The Company shall give to the Observer the same notice given to members of the Board of, and permit the Observer to attend, all meetings of its Board and all committee meetings thereof. The Observer will be entitled to receive all written materials and other information given to members of the Board in connection with such meeting at the same time such materials or information are given to such other members of the Board. If the Company proposes to take any action by written consent in lieu of a meeting of the Board or of any committee thereof, the Company shall give to the Observer the same notice it gives to the members of the Board, describing in reasonable detail the nature and substance of such action. The protections, rights to indemnification and reimbursement and limitations on liability set forth in Sections 8.1 and 8.2 shall apply to the Observer to the same extent that they apply to the Directors.

## **ARTICLE V**

### **POWERS OF AND RESTRICTIONS ON THE DIRECTORS**

**5.1 Management** Each Director shall participate in the direction, management and control of the business of the Company to the best of such Director’s ability. The Directors shall in all cases act as a group and shall have no authority to act individually. The Board of Directors may appoint one (1) or more officers to manage the day-to-day operations of the Company. The initial officers shall be as designated in Section 6.1 below and shall have the respective duties set forth in Section 6.2 below. The Board of Directors may adopt such rules and regulations for the management of the Company not inconsistent with this Operating Agreement or the Act. Except as otherwise provided in the Act or authorized pursuant to the terms of this Operating Agreement, no debt shall be contracted or liability incurred by or on behalf of the Company except by the Company’s Board of Directors.

**5.2 Additional Capital** Except as provided in Section 10.1, the Company shall not raise additional capital without the approval of the Board of Directors. No Member shall be required to make any additional contribution to the Company’s capital without the consent of such Member.

**5.3 Actions Requiring Board Approval** Without limiting the generality of Section 5.1, the Board of Directors may exercise all powers of the Company and do all such lawful acts and things, subject to any limitation set forth in the Act or this Operating Agreement.

**5.4 Additional Issuance of Units** The Company shall not issue additional Units without (i) the unanimous vote of the Board of Directors or (ii) the affirmative vote or written consent of the holders of at least two-thirds of the outstanding Units.

**5.5 Reports to Members** As soon as practicable after the end of any Fiscal Year but in any event within ninety (90) days thereafter, the Board of Directors shall provide to each of the Members a report setting forth the estimated closing Capital Accounts of each Member and a description of the manner of their calculation. As soon as practicable after the end of any Fiscal Year but in any event within one hundred twenty (120) days thereafter, the Board of Directors shall provide to each of the Members (i) a balance sheet, statement of income, statement of operations and statement of cash flows for such Fiscal Year, prepared in accordance with generally accepted accounting principles and accompanied by a report and opinion thereon by the Company's independent public accountants, and (ii) a final report setting forth the closing Capital Accounts of each Member and a description of the manner of their calculation. The Board of Directors shall also cause the Company to transmit within such one hundred twenty (120) day period to each Member of the Company and to each Person (or such Member's or Person's legal representative) who was a Member during any part of the Fiscal Year in question, a copy of the Company's income tax return for such Fiscal Year, together with a copy of the Member's Schedule K-1 thereto.

**5.6 Independent Public Accountants** An accounting firm selected by the Board of Directors shall be the Company's independent public accountants.

## **ARTICLE VI**

### **OFFICERS; COMMITTEES**

**6.1 Appointment of Officers** The Board of Directors may appoint officers of the Company which may include, but shall not be limited to: (a) chief executive officer; (b) president; (c) chief operating officer; (d) one or more executive vice presidents or vice presidents; (e) secretary; and (f) treasurer or chief financial officer. The Board of Directors may delegate their day-to-day management responsibilities to any such officers, and such officers shall have the authority to contract for, negotiate on behalf of and otherwise represent the interests of the Company as authorized by the Board of Directors in any job description created by the Board of Directors.

**6.2 Tenure and Duties of Officers** The Chief Executive Officer shall hold office at the pleasure of the Board of Directors and until his or her successor shall have been duly elected and qualified, unless sooner removed. The Chief Executive Officer may be removed at any time by the Board of Directors. If the office of Chief Executive Officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors. All other officers shall hold office at the pleasure of the Chief Executive Officer and may be removed and replaced by the Chief Executive Officer or the Board of Directors.

**(a) Duties of Chief Executive Officer.** The Chief Executive Officer shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and affairs of the Company. The Chief Executive Officer shall preside at all meetings of the Members, unless the Board of Directors shall have appointed another person to so preside and such person is present. The Chief Executive Officer shall perform other duties commonly incident to a chief executive officer of a California corporation and shall also perform



such other duties and have such other powers as the Board of Directors shall designate from time to time.

**(b) Duties of President.** The President may assume and perform the duties as defined by the Chief Executive Officer and/or the Board of Directors. The President shall perform other duties commonly incident to a president of a California corporation and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time.

**(c) Duties of Chief Operating Officer.** The Chief Operating Officer may assume and perform the duties as defined by the Chief Executive Officer and/or the Board of Directors. The Chief Operating Officer shall perform other duties commonly incident to a chief operating officer of a California corporation and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time.

**(d) Duties of Vice Presidents.** The Vice Presidents, in the order of their seniority, may assume and perform the duties of the President or Chief Operating Officer in the absence or disability of the President or Chief Operating Officer or whenever the office of President or Chief Operating Officer is vacant. The Vice Presidents shall perform other duties commonly incident to a vice president of a California corporation and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time.

**(e) Duties of Secretary.** The Secretary shall attend all meetings of the Members, and shall record all acts and proceedings thereof in the minute book of the Company. The Secretary shall give notice in conformity with this Operating Agreement of all meetings of the Members and Board of Directors requiring notice. The Secretary shall perform all other duties given him or her in this Operating Agreement and other duties commonly incident to a secretary of a California corporation and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time. The President may direct any Assistant Secretary to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform other duties commonly incident to the office of assistant secretary in a California corporation and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

**(f) Duties of Chief Financial Officer or Treasurer.** The Chief Financial Officer or Treasurer shall keep or cause to be kept the books of account of the Company in a thorough and proper manner, and shall render statements of the financial affairs of the Company in such form and as often as required by this Operating Agreement, the Board of Directors or the President. The Chief Financial Officer or Treasurer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Chief Financial Officer or Treasurer shall perform other duties commonly incident to the office of Chief Financial Officer or Treasurer in a California corporation and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time. The President may direct any Assistant Treasurer to assume and perform the duties of the Chief Financial Officer or Treasurer in the absence or disability of the Chief Financial

Officer or Treasurer, and each Assistant Treasurer shall perform other duties commonly incident to the office the Chief Financial Officer or Treasurer of a California corporation and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

**6.3 Creation of Committees** The Board of Directors may create committees to assist the Board of Directors and the officers in the governance of areas of importance to the Company. Subject to the terms of this Operating Agreement, such committees shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committees.

## **ARTICLE VII**

### **RIGHTS AND OBLIGATIONS OF MEMBERS**

**7.1 Limitation of Liability** Each Member's liability shall be limited as set forth in the Act and other applicable law. Except as otherwise provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be the debts, obligations and liabilities solely of the Company, and the Members of the Company shall not be obligated personally for any of such debts, obligations or liabilities solely by reason of being a Member of the Company.

**7.2 Nature of Rights and Obligations** Except as otherwise expressly provided herein, nothing contained in this Operating Agreement shall be deemed to constitute a Member an agent or legal representative of the other Members. A Member shall not have any authority to act for, or to assume any obligation or responsibility, on behalf of, any other Member or the Company.

**7.3 Member Access to Records** Upon written request of any Member, setting forth the purpose for such request, each Member shall have the right, during regular business hours, to inspect and copy such Company documents at the Member's expense as set forth in Section 11.8.

**7.4 Outside Activities** Except as may be provided in any written employment agreement or other written agreement between the Company and such person, each Member and Director and each Affiliate of each Member and Director shall be entitled to and may have business interests and engage in business activities in addition to those relating to the Company, and may engage in the ownership, operation and management of businesses and activities including serving on one (1) or more board of directors, for its own account and for the account of others, and may own interests in the same properties as those in which the Company or the other Members own an interest, without having or incurring an obligation to offer any interest in such properties, businesses or activities to the Company or any other Member, and no other provision of this Operating Agreement shall be deemed to prohibit any such Person from conducting such other businesses or activities. No provision of this Operating Agreement shall be construed to preclude any Member or Director or any of their respective Affiliates from engaging in or possessing an interest in any other business ventures of any nature or description, independently or with others, whether presently existing or hereafter created, and neither the

Company nor any Member shall have any rights in or to such independent ventures or the income or profits derived therefrom.

## **ARTICLE VIII**

### **CERTAIN MATTERS CONCERNING MEMBERS, DIRECTORS AND EXECUTIVE OFFICERS**

#### **8.1 Liability of Members, Directors and Officers; Indemnification.**

(a) No Member, Director or officer of the Company shall be liable, in damages or otherwise, to the Company or any Member for any act or omission performed or omitted to be performed by it in good faith (except for intentional misconduct or recklessness) pursuant to the authority granted to such Member, Director or officer of the Company by this Operating Agreement or by the Act.

(b) To the fullest extent permitted by the laws of the State of California and any other applicable laws, the Company shall indemnify and hold harmless each officer, Director and Member and their respective officers, directors, shareholders, members or partners (each, an “**Indemnitee**”), from and against any and all losses, claims, demands, costs, damages, liabilities (joint or several), expenses of any nature (including reasonable attorneys’ fees and disbursements), judgments, fines, settlements and other amounts (“**Damages**”) arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, in which an Indemnitee may be involved, or threatened to be involved, as a party or otherwise, arising out of or incidental to the business of the Company, regardless of whether an Indemnitee continues to be a Member, Director or an officer, director, shareholder, member or partner of such Member or Director or an officer of the Company at the time any such liability or expense is paid or incurred, except for any Damages based upon, arising from or in connection with any act or omission of an Indemnitee committed without authority granted pursuant to this Operating Agreement or in bad faith or otherwise constituting recklessness or intentional misconduct.

(c) Expenses (including reasonable attorneys’ fees and disbursements) incurred in defending any claim, demand, action, suit or proceeding, whether civil, criminal, administrative or investigative, subject to Section 8.1(b) hereof, may be paid (or caused to be paid) by the Company in advance of the final disposition of such claim, demand, action, suit or proceeding upon receipt of an undertaking by or on behalf of the Indemnitee to repay such amount if it shall ultimately be determined, by a court of competent jurisdiction from which no further appeal may be taken or the time for any appeal has lapsed (or otherwise, as the case may be), that the Indemnitee is not entitled to be indemnified by the Company as authorized hereunder or is not entitled to such expense reimbursement.

(d) The indemnification provided by Section 8.1(b) hereof shall be in addition to any other rights to which an Indemnitee may be entitled under any agreement or vote of the Members or Board of Directors, as a matter of law or otherwise, both (i) as to action in the Indemnitee’s capacity as a Member, Director or as an officer, director, employee, shareholder, member or partner of a Member, Director or Affiliate or as an officer of the Company, and (ii) as

to action in another capacity, and shall continue as to an Indemnatee who has ceased to serve in such capacity.

(e) Any indemnification hereunder shall be satisfied only out of the assets of the Company, and the Members shall not be subject to personal liability by reason of these indemnification provisions.

(f) The indemnification provided by this Section 8.1 shall be in addition to any other rights to which each Indemnatee may be entitled under any agreement or vote of the Members, as a matter of law or otherwise, both as to action in the Indemnatee's capacity as a Member or as an officer, director, employee, shareholder, member or partner of a Member or of an Affiliate, and shall inure to the benefit of the heirs, successors, assigns, administrators and personal representatives of the Indemnatee.

(g) The Company may purchase and maintain insurance on behalf of one (1) or more Indemnitees and other Persons against any liability which may be asserted against, or expense which may be incurred by, any such Person in connection with the Company's activities, whether or not the Company would have the power to indemnify such Person against such liability under the provisions of this Operating Agreement.

(h) An Indemnatee shall not be denied indemnification in whole or in part under this Section 8.1 because the Indemnatee had an interest in the transaction with respect to which the indemnification applies if the transaction was otherwise permitted by the terms of this Operating Agreement.

(i) The provisions of this Section 8.1 are for the benefit of each Indemnatee and its heirs, successors, assigns, administrators and personal representatives, and shall not be deemed to create any rights for the benefit of any other Persons.

**8.2 Other Matters Concerning the Members, Directors and Officers of the Company** Each Member, Director and officer of the Company may rely on, and shall be protected in acting or refraining from acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture or other paper or document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties.

(b) For purposes of this Operating Agreement, each Member, Director and officer of the Company may consult with legal counsel, accountants, appraisers, management consultants, investment bankers, other consultants and advisers reasonably selected by it and any written advice or written opinion of any such Person as to matters which such Member, Director and officer of the Company reasonably believes to be within such Person's professional or expert competence, and any act or omission, if done or omitted to be done in good faith reliance upon any such advice or opinion, will be conclusively presumed not to constitute fraud, gross negligence or willful or wanton misconduct.

## ARTICLE IX

### MEETINGS OF MEMBERS

**9.1 Meetings** The annual meeting of the Members shall be held on any date and time as the Board of Directors may designate. Additionally, unless otherwise prescribed by statute, a special meeting may be called by any Member or Members holding a majority of the Units outstanding.

**9.2 Place of Meetings** The Board of Directors may designate any place within the State of California or any other state, as the place of meeting for any meeting of the Members. If no designation is made, or if a special meeting is called by any Member or Members pursuant to Section 9.1, the place of meeting shall be the principal executive office of the Company.

**9.3 Notice of Meetings** Except as provided in Section 9.6, written notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not less than five (5) nor more than sixty (60) days before the date of the meeting, either personally, by mail or by electronic mail, by or at the direction of the Board of Directors or person calling the meeting, to each Member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered as provided in Section 17.1.

**9.4 Meeting of All Members** If all of the Members consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting lawful action may be taken.

**9.5 Record Date** For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any distribution, or in order to make a determination of Members for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declaring such distribution is adopted, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section 9.5, such determination shall apply to any adjournment thereof.

**9.6 Quorum** Members holding a majority of the Units, present in person or represented by proxy, shall constitute a quorum at any meeting of Members. In the absence of a quorum at any such meeting, Members holding a majority of the Units so represented may adjourn the meeting from time to time for a period not to exceed sixty (60) days without further notice. However, if the adjournment is for more than sixty (60) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at the meeting. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal during such meeting of Members holding Units whose absence would cause less than a quorum.

**9.7 Manner of Acting** The affirmative vote of Members entitled to vote holding a majority of the Units shall be the act of the Members unless the vote of a greater or lesser proportion or number is otherwise required by the Act or this Operating Agreement.

**9.8 Proxies** At all meetings of Members, a Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. Such proxy shall be filed with the Board of Directors of the Company before or at the time of the meeting. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy. Proxies may be conditional and/or irrevocable to the extent permitted by law.

**9.9 Action by Members Without a Meeting** Action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one (1) or more written consents describing the action taken, signed and delivered to the Secretary within sixty (60) days of the record date for that action, by Members having not less than the minimum number of votes that would be necessary to authorize or take that action at a meeting at which all Members entitled to vote on that action were present and voted. All such consents shall be delivered to the Secretary of the Company for inclusion in the minutes or for filing with the Company records. Action taken under this Section 9.9 shall be effective when such the number of consents required to authorize the proposed action shall have been received by the Secretary unless the consent specifies a different effective date. Any Member giving a written consent may revoke the consent by a writing received by the Secretary before written consents representing the number of votes required to authorize the proposed action have been received by the Secretary. The record date for determining Members entitled to take action without a meeting shall be the date the first Member signs a written consent.

**9.10 Waiver of Notice** When any notice is required to be given to any Member, a waiver thereof in writing signed by the person entitled to such notice, whether before, at or after the time stated therein, shall be equivalent to the giving of such notice.

## **ARTICLE X**

### **CONTRIBUTIONS TO THE COMPANY, CAPITAL UNITS AND CAPITAL ACCOUNTS**

**10.1 Capital Contributions** Each Member will make the Capital Contribution set forth on Schedule A hereto.

**10.2 Units; Unit Certificates** As of the date hereof, each Member's interest in the Company shall be represented by Units of membership interest, in the number set forth on Schedule A hereto. Additional Units (including new Classes of Units) may from time to time be issued in accordance with this Operating Agreement.

(b) The Company shall not issue certificates evidencing the Units issued by the Company, but the Units shall be subject to the following restrictions (in addition to any legend required under applicable state securities laws):

THE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), AND MAY NOT

BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER THE ACT OR UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY AND ITS COUNSEL THAT SUCH REGISTRATION IS NOT REQUIRED.

THE SALE, TRANSFER OR ASSIGNMENT OF THE SECURITIES ARE SUBJECT TO THE TERMS OF AN AGREEMENT BETWEEN THE COMPANY AND THE HOLDER HEREOF OR HIS PREDECESSOR IN INTEREST. COPIES OF SUCH AGREEMENT MAY BE OBTAINED BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD OF THIS CERTIFICATE TO THE SECRETARY OF THE COMPANY.

**10.3 Capital Accounts** A separate Capital Account will be maintained for each Member.

(i) To each Member's Capital Account there shall be credited (A) such Member's Capital Contributions, (B) such Member's distributive share of Net Profits and any items in the nature of income or gain which are specially allocated pursuant to Section 11.2 hereof, and (C) the amount of any Company liabilities assumed by such Member or which are secured by any Property distributed to such Member. The principal amount of a promissory note which is not readily traded on an established securities market and which is contributed to the Company by the maker of the note (or a Member related to the maker of the note within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(c)) shall not be included in the Capital Account of any Member until the Company makes a taxable disposition of the note or until (and to the extent) principal payments are made on the note, all in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(d)(2);

(ii) To each Member's Capital Account there shall be debited (A) the amount of money and the fair market value of any Property distributed to such Member pursuant to any provision of this Operating Agreement, (B) such Member's distributive share of Net Losses and any items in the nature of expenses or losses which are specially allocated pursuant to Section 11.2 hereof, and (C) the amount of any liabilities of such Member assumed by the Company or which are secured by any property contributed by such Member to the Company.

(b) In the event of a permitted sale or exchange of all or part of a Member's interest in the Company, the Capital Account of the transferor shall become the Capital Account of the transferee to the extent it relates to the transferred interest.

(c) The manner in which Capital Accounts are to be maintained pursuant to this Section 10.3 is intended, and shall be construed so as, to comply with the requirements of Code Section 704(b) and the Treasury Regulations promulgated thereunder.

**10.4 Withdrawal of Capital** A Member shall not be entitled to demand or receive from the Company the liquidation of his interest in the Company until the Company is dissolved in accordance with the provisions hereof and other applicable provisions of the Act.

## ARTICLE XI

### ALLOCATIONS, INCOME TAX, ELECTIONS AND REPORTS

**11.1 Allocation of Profits and LossesAllocation of Net Profits.** The Net Profits of the Company for each Accounting Period shall be allocated among the Members as follows:

(i) First, among the Members in an amount equal to the excess, if any, of (1) cumulative Net Losses allocated pursuant to Section 11.1(b)(i) and (ii) for all prior Accounting Periods, over (2) the cumulative Net Profits allocated pursuant to this Section 11.1(a)(i) for all prior Accounting Periods; and

(ii) Second, among the Members, in the manner that will most quickly cause the respective Adjusted Capital Account balances of the Members to be in proportion to such Members' respective Units; and

(iii) Then, to all Members in proportion to their respective Units.

**(b) Allocation of Net Losses.** The Net Losses of the Company for each Accounting Period shall be allocated among the Members as follows:

(i) First, among the Members in an amount equal to the excess, if any, of (1) cumulative Net Profits allocated pursuant to Section 11.1(a)(i) and (ii) for all prior Accounting Periods, over (2) the cumulative Net Losses allocated pursuant to this Section 11.1(b)(i) for all prior Accounting Periods; and;

(ii) Then, to the Members in proportion to their Adjusted Capital Account balances until all Member's Adjusted Capital Accounts have a balance of zero; and

(iii) Thereafter, to all Members in proportion to their respective Units.

**(c)** Notwithstanding Sections 11.1(a) and (b):

(i) If there is a net decrease in Company Minimum Gain (as hereafter defined) or Member Minimum Gain (as hereafter defined) during any fiscal year, the Members shall be allocated items of Company income and gain for such year (and, if necessary, for subsequent years) in accordance with Treasury Regulations Section 1.704-2(f) or Section 1.704-2(i)(4), as applicable.

(ii) Any Member Nonrecourse Deductions (as hereafter defined) for any fiscal year shall be specially allocated to the Member(s) who bears the economic risk of loss with respect to the Member Nonrecourse Debt (as hereafter defined) to which such Member Nonrecourse Deductions are attributable, in accordance with Treasury Regulations Section 1.704-2(i).

(iii) Items of Company income and gain shall be allocated to the Members in accordance with the "qualified income offset" requirements of Treasury Regulations Section 1.704-1(b)(2)(ii)(d).



(iv) To the extent any allocation of losses would cause or increase an Adjusted Capital Account Deficit (as hereafter defined) as to any Member, such allocation of losses shall be reallocated among the other Members in proportion to their respective Units, but in a manner that will not produce an Adjusted Capital Account Deficit as to any other Member.

(v) The allocations set forth in Sections 11.1(c)(i) through (iv) above (the “**Regulatory Allocations**”) are intended to comply with certain regulatory requirements, including the requirements of Treasury Regulations Sections 1.704-1(b) and 1.704-2. Notwithstanding, the provisions of Sections 11.1(a) and (b), the Regulatory Allocations shall be taken into account in allocating other items of income, gain, loss and deduction among the Members so that, to the extent possible, the net amount of such allocations of other items and the Regulatory Allocations to each Member shall be equal to the net amount that would have been allocated to each such Member if the Regulatory Allocations had not occurred.

(d) **Definitions.**

(i) “**Adjusted Capital Account Deficit**” means, with respect to any Member, the deficit balance, if any, in such Member's Adjusted Capital Account.

(ii) “**Company Minimum Gain**” has the meaning set forth in Treasury Regulations Section 1.704-2(b)(2) for the term “partnership minimum gain.”

(iii) “**Member Minimum Gain**” means gain attributable to Member Nonrecourse Debt determined in accordance with Treasury Regulations Section 1.704-2(i).

(iv) “**Member Nonrecourse Debt**” has the meaning set forth in Treasury Regulations Section 1.704-2(b)(4) for the term “partner nonrecourse debt.”

(v) “**Member Nonrecourse Deduction**” has the meaning set forth in Treasury Regulations Section 1.704-2(i)(2) for the term “partner nonrecourse deduction.”

(vi) “**Nonrecourse Deductions**” has the meaning set forth in Treasury Regulations Section 1.704-2(b)(1).

(e) **Tax Allocations.**

(i) Except as otherwise provided in this Section 11.1(e), each item of Company income, gain, loss and deduction shall be allocated for income tax purposes among the Members in the same manner as its correlative item of “book” income, gain, loss or deduction is allocated pursuant to this Section 11.1.

(ii) Notwithstanding Section 11.1(e)(i), income, gain, loss and deduction with respect to property contributed to the Company by a Member shall be allocated among the Members, pursuant to Treasury Regulations promulgated under Section 704(c) of the

Code, so as to take account of the variation, if any, between the adjusted basis of such property to the Company and its initial value. The Company shall account for such variation under any method approved under Section 704(c) of the Code and the applicable Treasury Regulations as chosen by the Board of Directors. If the Adjusted Asset Value of any Company asset is adjusted pursuant to the definition thereof, subsequent allocations of income, gain, loss and deduction with respect to such Company asset shall take account of any variation between the adjusted basis of such Company asset for federal income tax purposes and its Adjusted Asset Value in the same manner as under Code Section 704(c) and the Treasury Regulations promulgated thereunder under any method approved under Section 704(c) of the Code and the applicable Treasury Regulations as chosen by the Board of Directors. Allocations pursuant to this Section 11.1(e)(ii) are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing any Member's Capital Account or share of Net Profits, Net Losses and any other items or distributions pursuant to any provision of this Agreement.

**11.2 DistributionsMandatory Distributions.** Subject to applicable law and any limitations contained elsewhere in this Operating Agreement, the Board of Directors shall distribute cash to the Members pro rata based on the number of Units owned by the Members in an amount equal to the product of (i) the Tax Percentage and (ii) the Company's taxable income for such Fiscal Year determined in accordance with Section 703(a) of the Code as reflected on the Schedule K-1's in respect of each Unit (reduced by distributions made to such member during such Fiscal Year pursuant to Sections 11.2(b)). For purposes hereof, "Tax Percentage" shall mean initially fifty percent (50%) and shall be adjusted from time to time by the Board of Directors in response to changes in the tax rates applicable to individuals under the Code and under the state income tax laws of the State of California and in response to any other factors which cause the distributions under this Section 11.2(a) to be less than a Member's tax liability in respect of each Unit.

**(b) Additional Distributions.** Subject to applicable law and any limitations contained elsewhere in this Operating Agreement, the Board of Directors may elect from time to time to make additional distributions to the Members, and any such distributions shall be in proportion to such Members' respective Units.

**(c) Tax Withholding.** The Company shall comply with withholding requirements under federal, state and local law and shall remit amounts withheld to, and file required forms with, the applicable jurisdictions. To the extent the Company is required to withhold and pay over any amounts to any authority with respect to distributions or allocations to any Member, the amount withheld shall be treated as a distribution in the amount of the withholding to that Member. If the amount of withholding tax paid by the Company was not withheld from actual distributions, the Company may, at its option, (i) require the Member to promptly reimburse the Company for such withholding or (ii) reduce any subsequent distributions by the amount of such withholding. Each Member agrees to furnish the Company with any representations and forms as shall reasonably be requested by the Company to assist it in minimizing or eliminating and in determining the extent of, and in fulfilling, its withholding obligations.

**11.3 Limitation Upon Distributions** No distribution shall be declared and paid to a Member in violation of the Act.

(b) A Member who receives a distribution in violation of the Act shall be liable to the Company for the amount of the distribution to the extent provided in the Act.

**11.4 Accounting Principles** For financial accounting purposes, the profits and losses of the Company shall be determined in accordance with generally accepted accounting principles applied on a consistent basis under the accrual method of accounting.

**11.5 Interest on and Return of Capital Contributions** No Member shall be entitled to interest on its Capital Contribution or to return of its Capital Contribution. In addition, no Member shall have the right to withdraw any portion of such member's Capital Account. Except as required by the Company, no Member shall be personally liable to any other Member for the return of any Capital Contributions (or any additions thereto), it being agreed that any distribution as may be made from time to time shall be made solely from the assets of the Company and only in accordance with the terms of this Operating Agreement.

**11.6 Records and Reports** At the expense of the Company, the Directors shall maintain records and accounts of all operations and expenditures of the Company for a period of five (5) years from the end of the Fiscal Year during which the last entry was made on such record, the first two (2) years in the principal office of the Company. At a minimum the Company shall keep the following records:

(a) A current list of the full name and last known business address of each Director and each Member;

(b) A copy of the Articles and all amendments thereto, together with executed copies of any written powers of attorney pursuant to which the Operating Agreement and any certificate and all amendments thereto have been executed;

(c) Copies of the Company's federal, foreign, state and local income tax returns and reports, if any, for the three (3) most recent years;

(d) Copies of the Operating Agreement and all amendments thereto;

(e) True and full information regarding the status of the business and financial condition of the Company, including financial statements of the Company for the three (3) most recent years; and

(f) True and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each Member and which each Member has agreed to contribute in the future, and the date on which each became a Member.

**11.7 Returns and Other Elections** The Board of Directors shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company

does business. Copies of such returns, or pertinent information therefrom, shall be furnished to the Members within a reasonable time after the end of the Company's Fiscal Year. All elections permitted to be made by the Company under federal or state laws shall be made by the Board of Directors in its discretion.

**11.8 Tax Matters Partner** John Wicker is hereby designated the Tax Matters Partner of Company for purposes of Chapter 63 of the Code and the Treasury Regulations thereunder. The Tax Matters Partner shall employ experienced tax counsel to represent the Company in connection with any audit or investigation of the Company by the Internal Revenue Service and in connection with all subsequent administrative and judicial proceedings arising out of such audit. If the Tax Matters Partner is required by law or regulation to incur fees and expenses in connection with tax matters not affecting all the Members, then the Tax Matters Partner may, in its sole discretion, seek reimbursement from those Members on whose behalf such fees and expenses were incurred. The Tax Matters Partner shall keep the Members informed of all administrative and judicial proceedings, as required by Section 6223(g) of the Code, and shall furnish to each Member, if such Member so requests in writing, a copy of each notice or other communication received by the Tax Matters Partner from the Internal Revenue Service, except such notices or communications as are sent directly to such requesting Member by the Internal Revenue Service. The relationship of the Tax Matters Partner to the Members shall be that of a fiduciary, and the Tax Matters Partner shall have fiduciary obligations to perform its duties as Tax Matters Partner in such manner as will serve the best interests of the Company and all of the Company's Members. Except as set forth above, the Company will bear all expenses incurred by the Tax Matters Partner in carrying out his duties as such. To the fullest extent permitted by law, the Company agrees to indemnify the Tax Matters Partner and its agents and save and hold them harmless, from and in respect to all (i) fees, costs and expenses in connection with or resulting from any claim, action or demand against the Tax Matters Partner or the Company that arise out of or in any way relate to the Tax Matters Partner's status as Tax Matters Partner for the Company, and (ii) all such claims, actions, and demands and any losses or damages therefrom, including amounts paid in settlement or compromise of any such claim, action or demand; provided that this indemnity shall not extend to conduct by the Tax Matters Partner adjudged (i) not to have been undertaken in good faith or (ii) to have constituted recklessness, gross negligence or intentional wrongdoing by the Tax Matters Partner. The Tax Matters Partner may be changed by the Directors.

## **ARTICLE XII**

### **TRANSFERABILITY**

**12.1 Restrictions on Transferability** Except as provided in Sections 12.2(a) through (f), inclusive, no Member shall sell, assign, pledge, mortgage, or otherwise dispose of or transfer its interest in the Company without the prior written consent of the Board of Directors.

(b) In addition to other restrictions on transfer contained herein, each Member agrees that it will not make any disposition of all or any part of its interest in the Company which will result in the violation by it or by the Company of the Securities Act of 1933, as amended, or any other applicable securities laws.

**12.2 Right of First Offer** If at any time a Member wishes to transfer its interest, in whole or in part, such Member (the “**Proposed Transferor**”) shall send a written notice (the “**Transfer Notice**”) of such proposed transfer to the Board of Directors and each Member (as reflected on Schedule A hereto), which Transfer Notice shall describe all material terms of the proposed transfer including, without limitation, the number and class of Units proposed to be transferred (the “**Offered Units**”), the proposed purchase price per Unit, the terms of payment, and the time, location and closing date for the closing of the proposed transfer, which date for the closing shall not be less than forty (40) days after the date of such Transfer Notice. Except in the case of death or a transfers permitted by clause (f) below, in the event of a transfer by gift, property settlement or otherwise where the proposed transferee is not paying full fair market value in cash, the price shall be deemed to be the fair market value of the Proposed Transferor’s interest in the Company payable in cash.

(b) The Board of Directors may elect to cause the Company (or any assignee) to accept the offer set forth in the Transfer Notice in whole, but not in part, and purchase the Offered Units within thirty (30) days after receipt of the Transfer Notice by giving notice (a “Purchase Notice”) to the Proposed Transferor. At the closing specified in the Transfer Notice, the Company (or any assignee) shall make payment of the purchase price specified in the Transfer Notice to the Proposed Transferor and the Board of Directors shall amend the Unit Register to reflect such transfer.

(c) If the Board of Directors does not submit to the Proposed Transferor a Purchase Notice covering the purchase of all the Offered Units upon the terms specified in the Transfer Notice within thirty (30) days after receipt of the Transfer Notice, then it may, at its discretion provide to the Members, pro rata in accordance with Units, within the period beginning thirty-one (31) days after receipt of the Transfer Notice and ending at the end of the fortieth (40<sup>th</sup>) day after receipt of the Transfer Notice, the right to accept the offer set forth in the Transfer Notice in whole, but not in part, and purchase the Offered Units by giving a Purchase Notice to the Proposed Transferor as described above. If not all of the Members elect to purchase their *pro rata* share of the Offered Units, then the Proposed Transferor shall promptly notify in writing the Members who do so elect and shall offer such Members the right to acquire such unsubscribed Units. Each Member shall have five (5) business days after receipt of such notice to notify the Proposed Transferor of its election to purchase all or a portion of the unsubscribed Offered Units. If the Members do not submit to the Proposed Transferor a Purchase Notice covering the purchase of all of the Offered Units upon the terms specified in the Transfer Notice within forty-five (45) days after receipt of the Transfer Notice, then the Proposed Transferor shall be permitted, during the sixty (60) day period following the date forty-five (45) days after receipt of the Transfer Notice, to sell all of the Offered Units for a price equal to or higher than, and upon terms the same as or more favorable to the Proposed Transferor than, the price and terms specified in the Transfer Notice. Copies of all notices under this Section 12.2 shall also be sent to the Company.

(d) Upon the closing of a sale of Offered Units in accordance with the terms of this Operating Agreement and the execution by the purchaser of such Offered Units of a counterpart of this Operating Agreement, such purchaser shall become an assignee of the Proposed Transferor’s economic interest in the Company but shall not be admitted as a

Substitute Member of the Company without the consent of the Board of Directors and the Board of Directors shall amend Schedule A to reflect such transfer.

(e) The provisions of this Section 12.2 may be waived by the Board of Directors or with the approval of the holders of at least a majority of the outstanding Units.

(f) Anything to the contrary herein notwithstanding, the following transactions shall be exempt from the right of first offer provided for in this Section 12.2 and the restriction on transfer provided in Section 12.1(a):

(i) A Member's transfer during such Member's lifetime to such Member's immediate family or to any trustee for the benefit of such Member or such Member's immediate family (*i.e.*, spouse, lineal descendant, father, mother, brother or sister).

(ii) A Member's transfer to any person on death whether by will, trust or intestacy.

(iii) A transfer to the Company.

(iv) A transfer to the parent entity or a subsidiary of a Member.

In any such case, the transferee shall receive and hold such interest subject to the provisions of this Operating Agreement, including Section 12.2, and there shall be no further, transfer except in compliance with this Section 12.2.

## ARTICLE XIII

### ADDITIONAL AND SUBSTITUTE MEMBERS

**13.1 Admission of Additional Members and Substitute Members** Any Person acceptable to the Board of Directors may, subject to the terms and conditions of this Operating Agreement, become an Additional Member of the Company by the purchase of new Units for such consideration as the Board of Directors shall determine in accordance with the terms of this Operating Agreement. The Officers shall revise the Unit Register to reflect any such admission. Substitute Members shall be admitted as set forth in Section 12.2(d). Subject to approval by the Board of Directors, the Company may enter into agreements with Members providing for the repurchase of Units in certain events, including termination of employment or other relationship with the Company.

**13.2 Allocations to Additional Members and Substitute Members** No Additional Member or Substitute Member shall be entitled to any retroactive allocation of losses, income or expense deductions incurred by the Company. The Net Profits and Net Losses of the Company for each Accounting Period shall be allocated among the Members in proportion to their respective interests, with the Accounting Period being subject to adjustment pursuant to Section 1.1(a) upon the addition of an Additional or Substitute Member.

## ARTICLE XIV

### DISSOLUTION AND TERMINATION

**14.1 Dissolution** The Company shall be dissolved upon the occurrence of any of the following events (a “**Dissolution Event**”):

- (a) the written agreement of Members holding at least two-thirds of the Units;
- or
- (b) the entry of a decree of judicial dissolution under the Act.

Notwithstanding the foregoing, upon the occurrence of a Dissolution Event, if the business of the Company is continued by the consent of remaining Members holding a majority of the Units within ninety (90) days following the occurrence of any such event (or, if later, within a reasonable time after the Company becomes aware of such event), then the Company shall not be dissolved but shall be continued.

**14.2 Effect of Filing of Certificate of Cancellation** The Company shall cease to carry on its business, except insofar as may be necessary for the winding up of its business, upon the occurrence of a final dissolution event, but its separate existence shall continue until a Certificate of Cancellation has been filed with the Secretary of State of the State of California or until a decree dissolving the Company has been entered by a court of competent jurisdiction.

**14.3 Distribution of Assets Upon Dissolution** In settling accounts after dissolution, the liabilities of the Company shall be entitled to payment in the order of priority as provided by law in satisfaction of all liabilities and obligations of the Company whether by payment or the establishment of reasonable reserves therefor. The remaining assets of the Company shall be distributed to the Members in accordance with the positive balances of their Capital Accounts by the end of the taxable year in which the dissolution occurs or, if later, within 80 days after the date of dissolution.

**14.4 Winding Up** Except as provided by law, upon dissolution, each Member shall look solely to the assets of the Company for the return of its Capital Contribution. If the Company Property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the Capital Contribution of each Member, such Member shall have no recourse against any other Member. The winding up of the affairs of the Company and the distribution of its assets shall be conducted exclusively by the Board of Directors, who subject to the terms of this Operating Agreement, are hereby authorized to take all actions necessary to accomplish such distribution, including without limitation, selling any Company assets the Board of Directors deems necessary or appropriate to sell.

**14.5 Filing of Certificate of Cancellation** When all debts, liabilities and obligations have been paid and discharged or adequate provisions have been made therefor and all of the remaining property and assets have been distributed to the Members, a Certificate of Cancellation shall be executed and filed with the Secretary of State of the State of California, which certificate shall set forth the information required by the Act.

(b) Upon the acceptance of the Certificate of Cancellation, the existence of the Company shall cease, except for the purpose of suits, other proceedings and appropriate action as provided in the Act.

## **ARTICLE XV**

### **MERGER**

**15.1 Merger** The Company may upon a vote of the Members of the Company holding at least two-thirds of the Units, merge pursuant to an agreement of merger with or into one (1) or more entities formed or organized under the laws of the State of California or any other state of the United States or any foreign country or other foreign jurisdiction to the extent permitted under the Act, with such entity as the agreement shall provide being the surviving or resulting entity.

**15.2 Vote Relating to Merger or Consolidation** A merger by the Company and any other entity shall be approved by the Board of Directors and Members holding at least two-thirds of the Units.

**15.3 Exchange Relating to Merger** Rights or securities of, or interests in, the Company or other entity that is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, an entity which is not the surviving or resulting entity in the merger or consolidation. In the event of any such transaction, including a Reincorporation or Capital Transaction, Units of the Company shall be exchanged for interests in the new or successor entity based upon the respective Adjusted Capital Account balances of the Members, immediately prior to the Merger, including any allocation of Net Profit or Net Loss pursuant to Article XI in connection with such transaction.

**15.4 Filing and Effect of Certificate of Merger** If the Company enters into an agreement of merger, the surviving entity shall file a Certificate of Merger in the Office of the Secretary of State of the State of California containing the information required by the Act. Unless a future date is provided for in such Certificate of Merger, the effective date shall be the date of filing with the Secretary of State of the State of California.

**15.5 Amendment of Old or Adoption of New Operating Agreement** An agreement of merger approved in accordance with Section 15.2 may effect any amendment to the Company's Operating Agreement or effect the adoption of a new Operating Agreement for the Company or the surviving entity, as the case may be. Any amendment of the Operating



Agreement or adoption of a new Operating Agreement shall be effective at the effective time or date of the merger.

**15.6 Assumption of Assets and Liabilities** When any merger shall have become effective under this Article XV, for all purposes of the laws of the State of California, all of the rights, privileges and powers of the Company and each of the other entities that have merged, and all property, real, personal and mixed, and all debts due or incurred to or by any of the constituent parties, as well as all other things and causes of action belonging to each of such parties to the merger, shall be vested in the surviving or resulting entity, and shall thereafter be the property or obligation of the surviving or resulting entity, and the title to any real property vested by deed or otherwise shall not revert or be in any way impaired.

## **ARTICLE XVI**

### **BINDING ARBITRATION OF DISPUTES**

**16.1 Binding Arbitration** Any dispute, claim or controversy of whatever nature arising out of or relating to this Operating Agreement or a Member's employment or other relationship with the Company (including any other agreement(s) contemplated hereunder), including, without limitation, any action or claim based on tort, contract, or statute, or concerning the interpretation, effect, termination, validity, performance and/or breach of this Operating Agreement, shall be resolved by final and binding arbitration administered by the San Francisco office of the American Arbitration Association (the "Administrator").

Notwithstanding the foregoing or any other provision contained in this Article XVI, the parties shall have the right to request one or more provisional remedies from a court of competent jurisdiction pursuant to California Code of Civil Procedure Section 1281.8.

**16.2 Initiation** Arbitration shall be initiated in the following manner:

(a) **Timing.** Unless barred by an applicable statute or period of limitations, either party may initiate an arbitration at any time after a dispute has arisen by serving upon the other party and filing with the Administrator a written Demand for Arbitration, including a general description of the nature of the claim and the nature and amount of damages and/or other relief sought (the "Demand for Arbitration"). A claim shall be forever barred if on the date the Demand for Arbitration is filed with the Administrator, the claim, if asserted in a civil action, would be barred under law by an applicable statute or period of limitations.

(b) **Response.** If the responding party desires to file a response and/or counterclaim to the Demand for Arbitration, it must do so within twenty (20) calendar days after service of the Demand for Arbitration. Any response to a counterclaim shall be filed and served within ten (10) calendar days after service of the counterclaim, but no such response shall be required. A failure to file a counterclaim or response will not operate to delay the arbitration proceedings.

(c) **Further Pleadings.** After the filing of the Demand for Arbitration, any counterclaim, and/or any responses thereto, no further claims or counterclaims may be made except by order of the arbitrator made on a duly noticed motion to the arbitrator.

**16.3 Appointment and Powers of Arbitrator** The dispute shall be submitted to a single arbitrator chosen by the parties from a list of potential arbitrators provided by the Administrator. The parties shall use their best efforts to cause the Administrator to provide such list to the parties within fifteen (15) days after the Demand for Arbitration is filed. Should the parties be unable to agree on a choice of arbitrator within ten (10) days after receipt of the list from the Administrator, then either party may request the Administrator to furnish a list of three (3) names and each side may strike one (1) name, thereby nominating the remaining person as the arbitrator. If more than one (1) name remains, the Administrator shall choose an arbitrator from the list of remaining names.

If the designated arbitrator shall die, become incapable of, unwilling to, or unable to serve or proceed with the arbitration, the Administrator shall appoint a replacement arbitrator, and such replacement arbitrator shall have all such powers as if he or she had been originally appointed as the arbitrator.

Should either party refuse or neglect, after reasonable notice, to furnish the arbitrator with any papers or information demanded or to attend hearings before the arbitrator, the arbitrator is empowered by both parties to proceed with the remainder of the arbitration process set forth in this Article XVI.

The arbitrator is authorized to issue an award for compensatory damages, and/or to grant any equitable remedy or relief he or she deems just and equitable and within the scope of the Agreement of the parties, including, but not limited to, an injunction or order for specific performance. The arbitrator shall not have the authority to award punitive damages.

**16.4 Costs and Fees** The arbitrator, in his or her discretion, shall be authorized to determine whether a party is the prevailing party, and if so, to award to that prevailing party reimbursement for its share of the costs and fees of the Administrator and the arbitrator, and reimbursement for its reasonable attorneys' fees, disbursements (including, for example, expert witness fees and expenses, photocopy charges, travel expenses, etc.), and costs arising from the arbitration. However, until any such order is issued, the parties shall bear equally the costs and fees of the Administrator and the arbitrator.

**16.5 Location and Date of Arbitration Hearing** The arbitration shall be held in San Francisco, California, and shall commence no later than sixty (60) days following the service of the Demand For Arbitration, or as soon thereafter as practicable.

**16.6 Pre-Hearing Conferences** Within thirty (30) days of the time that the arbitrator is chosen, the arbitrator shall hold a Pre-Hearing Conference with the parties for the purpose of narrowing the issues and in all respects arranging for the most expeditious hearing possible of the matters in dispute.

**16.7 Conduct of the Arbitration Hearing** The arbitration hearing shall be conducted according to the discretion of the arbitrator. Judicial rules relating to the order of proof, the conduct of the hearing and the presentation and admissibility of evidence need not be followed. Any relevant information, including hearsay, may be admitted by the arbitrator regardless of its admissibility as evidence in court, but the arbitrator also shall be authorized to exclude evidence.

The parties shall have the power to subpoena witnesses to attend the arbitration hearing pursuant to California Code of Civil Procedure. The arbitrator shall have full power to give such directions and to make such orders in the conduct of the arbitration, including setting pre-arbitration procedures and scheduling any motions to correct or amend the arbitration award, as he or she deems just and appropriate.

**16.8 Award** The Arbitrator shall, within fifteen (15) calendar days after the conclusion of the Arbitration hearing, or as soon as it is practicable issue a written award and a brief written statement of decision describing the reasons for the award, including the calculation of any compensatory damages awarded.

**16.9 Survival** The provisions in this Article XVI shall survive and apply in all events, including, without limitation, after the breach, repudiation and/or termination of this Operating Agreement or any other related documents.

**16.10 Satisfaction of Award** Absent the filing of an application to correct or vacate the arbitration award under California Code of Civil Procedure, each party shall fully perform and satisfy the terms of the arbitration award within fifteen (15) days of the service of the award.

**16.11 Finality of Award** The award of the arbitrator shall be final and binding upon the parties without appeal or review except as permitted by California law. Any party may apply to any court of competent jurisdiction for confirmation and entry of judgment based on said award. In connection with any application to confirm, correct or vacate the arbitration award, any appeal of any order rendered pursuant to any such application, or any other action required to enforce the arbitration award, the prevailing party shall be entitled to recover its reasonable attorneys' fees, disbursements and costs incurred in such post-arbitration award activities.

## **ARTICLE XVII**

### **MISCELLANEOUS PROVISIONS**

**17.1 Notices** Any notice, demand or communication required or permitted to be given by any provision of this Operating Agreement shall be in writing and shall be deemed effectively given or delivered upon receipt. Any such notice, demand or communication may be given: (a) by personal delivery to the party to be notified; (b) by confirmed telex, telegraph or facsimile; or (c) by mail or courier. All communications shall be delivered to a Director, a Member or the Company, as appropriate, to such Director's, such Member's or the Company's address or facsimile number as such appears in the Company's records as of the date hereof or to such other address or facsimile number as such Member, such Director or the Company may designate by ten (10) days advance written notice to the other parties hereto.

**17.2 Application of California Law** This Operating Agreement, and the application or interpretation hereof, shall be governed exclusively by its terms and by the laws of the State of California (without giving effect to principles of conflicts of laws).

**17.3 Waiver of Action for Partition** Each Member irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the property of the Company.

**17.4 Amendments** Any amendment to this Operating Agreement may be proposed to the Members by (i) the Board of Directors or (ii) Members holding at least a majority of the Units that would be outstanding. A vote on an amendment to this Operating Agreement shall be taken within sixty (60) days after notice thereof has been given to the Members unless such period is otherwise extended by applicable laws, regulations, or agreement of the Members. A proposed amendment shall become effective at such time as it has been approved by Members holding a majority of the Units. Notwithstanding the foregoing, any amendment to this Operating Agreement that alters or changes the voting or other powers, preferences, or other special rights or privileges, or restrictions of the Units so as to affect them adversely, shall become effective at such time as it has been approved by Members holding at least two-thirds of the Units. In no event shall any amendment, merger, reorganization or other event or action disproportionately affect the interest of any Member or change the limited liability nature of the Member's interest, without the consent of the Member affected.

**17.5 Execution of Additional Instruments** Each Member hereby agrees to execute such other and further statements of interest and holdings, designations, powers of attorney and other instruments necessary to comply with any laws, rules or regulations.

**17.6 Construction** Whenever the singular number is used in this Operating Agreement and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders and vice versa. This Operating Agreement is prepared and executed in the English language only and any translation of this Operating Agreement into any other language shall have no effect.

**17.7 Headings** The headings in this Operating Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Operating Agreement or any provision hereof.

**17.8 Waivers** The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Operating Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

**17.9 Rights and Remedies Cumulative** The rights and remedies provided by this Operating Agreement are cumulative, and the use of any one (1) right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Such rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

**17.10 Severability** If any provision of this Operating Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Operating Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

**17.11 Heirs, Successors and Assigns** Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Operating Agreement, their respective heirs, legal representatives, successors and assigns.

**17.12 Creditors** None of the provisions of this Operating Agreement shall be for the benefit of or enforceable by any creditor of the Company.

**17.13 Counterparts** This Operating Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one (1) and the same instrument.

**17.14 No Third Party Beneficiaries** It is understood and agreed among the parties that this Operating Agreement and the covenants made herein are made expressly and solely for the benefit of the parties hereto, and that no other Person, other than an Indemnatee under Article VIII hereof (but only in respect of the rights under such Article VIII), shall be entitled or be deemed to be entitled to any benefits or rights hereunder, nor be authorized or entitled to enforce any rights, claims or remedies hereunder or by reason hereof.

**17.15 Complete Agreement** This Agreement and the Articles constitute the complete and exclusive statement of agreement among the Members with respect to the subject matter herein and therein and replace and supersede all prior written and oral agreements or statements by and among the Members or any of them with respect to the subject matter hereof. To the extent that any provision of the Articles conflicts with any provision of this Agreement, the Articles shall control.

By executing this counterpart of the Operating Agreement of TEGSCO, LLC, the undersigned Member of TEGSCO, LLC agrees to be bound by the terms and conditions of the Amended and Restated Operating Agreement of TEGSCO, LLC.

**MEMBER:**

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(signature)

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(print name)



## Office of the Secretary of State

July 19, 2010

RE: Tegsco, LLC  
File Number: 801294740

It has been our pleasure to file the application for registration and issue the enclosed certificate of filing evidencing the authority of the foreign limited liability company (llc) to transact business in Texas.

Unless exempted, the foreign entity is subject to state tax laws, including franchise tax laws. Shortly, the Comptroller of Public Accounts will be contacting the entity at its registered office for information that will assist the Comptroller in setting up the franchise tax account for the foreign entity. Information about franchise tax, and contact information for the Comptroller's office, is available on their web site at <http://window.state.tx.us/taxinfo/franchise/index.html>.

The registered foreign entity is not required to file annual reports with the Secretary of State. An application for amended registration must be filed with the Secretary of State if the foreign entity changes its name, changes the purposes to be pursued in Texas, or changes the assumed name it elected to use on its application for registration. It is important for the foreign entity to continuously maintain a registered agent and office in Texas. Failure to maintain an agent or office or file a change to the information in Texas may result in the revocation of the entity's registration by the Secretary of State.

If we can be of further service at any time, please let us know.

Sincerely,

Corporations Section  
Business & Public Filings Division  
(512) 463-5555

Enclosure

**TEGSCO, LLC**  
**SECOND AMENDED AND RESTATED**  
**OPERATING AGREEMENT**

THIS SECOND AMENDED AND RESTATED OPERATING AGREEMENT (the “**Operating Agreement**”) of TEGSCO, LLC, a California limited liability company (the “**Company**”), is made as of the 15<sup>th</sup> day of November, 2004 (the “**Effective Date**”), by and among the members listed on the Unit Register, and amends and restates in its entirety the Amended and Restated Operating Agreement of TEGSCO, LLC, dated March 15, 2004 (the “**First Amended and Restated Operating Agreement**”).

WHEREAS, the Company was formed pursuant to the provisions of the Beverly-Killea Limited Liability Company Act (the “**Act**”), upon the filing of the Articles of Organization (the “**Articles**”) with the Secretary of State of the State of California on May 9, 2002; and

WHEREAS, the Members now desire to amend and restate the First Amended and Restated Operating Agreement as provided herein;

NOW, THEREFORE, in consideration of mutual covenants and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

**ARTICLE I**

**DEFINITIONS**

**1.1 Definitions** The following terms used in this Operating Agreement shall have the following meanings (unless otherwise expressly provided herein):

(a) “**Accounting Period**” shall be (i) the Company’s Fiscal Year if there are no changes in the Members’ respective interests in Company income, gain, loss or deductions during such Fiscal Year except on the first day thereof or (ii) any other period beginning on the first day of a Fiscal Year, or any other day during a Fiscal Year, upon which occurs a change in such respective interests, and ending on the last day of a Fiscal Year, or on the day preceding an earlier day upon which any change in such respective interest shall occur.

(b) “**Act**” shall mean the Beverly-Killea Limited Liability Company Act, as amended.

(c) “**Additional Member**” shall mean any Person who or which is admitted to the Company as an Additional Member pursuant to Article XIII hereof.

(d) “**Adjusted Asset Value**” with respect to any asset shall be the asset’s adjusted basis for federal income tax purposes, except as follows:



(i) (i) The initial Adjusted Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset at the time of contribution, as determined by the contributing Member and the Board of Directors.

(ii) The Adjusted Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Board of Directors, and the resulting unrecognized profit or loss allocated to the Capital Accounts of the Members pursuant to Article XI, as of the following times: (i) the acquisition of an additional interest in the Company by any new or existing Member in exchange for a capital contribution; (ii) the distribution by the Company to a Member of more than a *de minimis* amount of Company assets, unless all Members receive simultaneous distributions of either undivided interests in the distributed property or identical Company assets in proportion to their interests in Company distributions; (iii) the termination of the Company either by expiration of the Company's term or the occurrence of an event of early termination; and (iv) the liquidation of the Company within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g).

(iii) The Adjusted Asset Values of the Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m) and subparagraph (iii) of the definition of "*Net Profits*" and "*Net Losses*" below.

(iv) The Adjusted Asset Value of any Company asset distributed to a Member shall be the gross fair market value of such asset on the date of distribution as determined by the Board of Directors.

(e) "**Adjusted Capital Account**," with respect to any Member, shall mean the Member's Capital Account as adjusted by the items described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(c), 1.704-2(g)(1), 1.704-2(i)(5) and 1.704-1(b)(2)(ii)(d)(4), (5) and (6) of the Treasury Regulations.

(f) "**Affiliate**" with respect to any Person, shall mean (i) any Person which beneficially holds, directly or indirectly, or otherwise controls, ten percent (10%) or more of such Person's outstanding securities, (ii) any Person, ten percent (10%) or more of which Person's outstanding securities are beneficially held, directly or indirectly, or are otherwise controlled, by such a Person and (iii) any Person, ten percent (10%) or more of which Person's outstanding securities are beneficially held, directly or indirectly, or are otherwise controlled, by a Person described in (i) above.

(g) "**Board of Directors**" shall have the meaning specified in Section 4.1.

(h) "**Capital Account**" as of any given date shall mean the Capital Account of each Member as specified in Section 10.3.

(i) "**Capital Contribution**" shall mean the amount of money and the fair market value of any property contributed to the Company by a Member whenever made net of any liability of such Member assumed by the Company and any liability secured by property

contributed by such Member. Any reference to a capital contribution of a Member shall include the Capital Contribution made by a predecessor holder of any Units held by such Member with respect to such Units.

(j) **“Capital Transactions”** shall mean the dissolution of the Company, a sale of all or substantially all of the Company’s assets, other than sales in the ordinary course of business, and any merger, consolidation, sale of Units or similar transaction or series of transactions, in each case as a result of which the Members will no longer have an interest in the Company or the net assets of the Company are or will be distributed in full to the Members; provided, that a Capital Transaction shall not include a Reincorporation.

(k) **“Code”** shall mean the Internal Revenue Code of 1986, as amended, or corresponding provisions of subsequent superseding federal revenue laws.

(l) **“Company”** shall refer to TEGSCO, LLC.

(m) **“Company Property”** shall mean any tangible and intangible personal property now owned or hereafter acquired by the Company, including, without limitation, all cash, cash equivalents, deposits, accounts receivable, work-in-progress, inventory, equipment, materials, supplies, prototypes, vehicles, real property, fixtures, permits, approvals, licenses, patents, consents, contracts, agreements, applications for permits, approvals, licenses, development rights, development agreements, trade names and warranties, or any other property.

(n) **“Directors”** shall mean the directors designated or elected by the Members pursuant to the terms of this Operating Agreement. For purposes of the Act and for all other purposes, the term “Director” as used in this Operating Agreement shall mean “manager.” Consequently, the parties intend that any restriction on the authority of a Director set forth in this Operating Agreement shall also be read as a restriction on such person’s authority as a manager.

(o) **“Fiscal Year”** shall mean the Company’s fiscal year. The Company’s fiscal year shall be the calendar year.

(p) **“Member”** shall mean each of the Members listed on the Unit Register maintained by the Company, any Additional Member and any Substituted Member which is, as of a given time, a member of the Company.

(q) **“Net Profit or Net Loss”** shall be an amount computed for each Accounting Period as of the last day thereof that is equal to the Company’s taxable income or loss for such Accounting Period, determined under the accrual method of accounting in accordance with Section 703(a) of the Code (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(i) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Net Profit or Net Loss pursuant to this Section 1.1(q) shall be added to such taxable income or loss;

(ii) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i) and not otherwise taken into account in computing Net Profit or Net Loss pursuant to this definition shall be subtracted from such taxable income or loss;

(iii) Gain or loss resulting from any disposition of a Company asset with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Adjusted Asset Value of the asset disposed of rather than its adjusted tax basis; and

(iv) To the extent an adjustment to the adjusted tax basis of any asset is required pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution in kind of Company Property, the amount of such adjustment shall be treated as an item of gain or loss.

(v) If the Adjusted Asset Value of any Company asset is adjusted pursuant to the definition thereof, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset.

(r) **“Operating Agreement”** shall mean this Operating Agreement as originally executed and as amended in accordance with the terms of this Operating Agreement from time to time.

(s) **“Person”** shall mean any individual or corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, unincorporated organization or other entity, including any government or political subdivision or any agency or instrumentality thereof and the heirs, executors, administrators, legal representatives, successors, and permitted assigns of such “Person” where the context so admits.

(t) **“Reincorporation”** shall mean a merger, reorganization or exchange of Units with an entity such that following such transaction, a majority of the equity interests in such entity are held by Members.

(u) **“Substitute Member”** shall mean any Person who or which is admitted to the Company as a Substitute Member pursuant to Articles XII and XIII of this Operating Agreement.

(v) **“Treasury Regulations”** shall mean the Income Tax Regulations, including temporary regulations, promulgated under the Code, as amended from time to time.

(w) **“Units”** shall mean the capital units issued by the Company to its Members which represent each Member’s interest in the Company.

## ARTICLE II

### FORMATION OF COMPANY

**2.1 Formation** On May 9, 2002, the Company was organized as a California limited liability company under and pursuant to the Act.

**2.2 Name** The name of the Company is TEGSCO, LLC.

**2.3 Principal Place of Business** The principal place of business of the Company shall initially be at 450 7<sup>th</sup> Street, San Francisco, CA 94103. The Company may locate its places of business and registered office at any other place or places as the Board of Directors may from time to time deem advisable.

**2.4 Registered Office and Registered Agent** The Company's registered office in the State of California shall be at the office of its registered agent for service of process, and the name and address of its initial registered agent for service of process shall be John Wicker, 450 7<sup>th</sup> Street, San Francisco, CA 94103. The Board of Directors may change the Company's agent for service of process from time to time.

**2.5 Term** The Company's existence commenced May 9, 2002, upon the filing with the Secretary of State of the State of California of the Articles and shall continue until the Company is dissolved in accordance with either the provisions of this Operating Agreement or the Act.

## ARTICLE III

### PURPOSES OF COMPANY

**3.1 Company Purposes** The purpose of the Company is to engage in any lawful act or activity for which a limited liability company may be organized under the laws of the State of California. The Company shall have all powers available to limited liability companies under the Act to make and perform all contracts and to engage in all actions and transactions necessary or advisable to carry out the purposes of the Company.

## ARTICLE IV

### MANAGEMENT OF COMPANY

**4.1 Generally** Except as specifically set forth in this Operating Agreement, the Members hereby delegate all power and authority to manage the business and affairs of the Company to the Directors, who shall act as the managers of the Company subject to and in accordance with the terms of this Operating Agreement (including, without limitation, Section 5.1). Such Directors shall constitute the "Board of Directors" and such term may be used in this Operating Agreement to refer to such Directors. Such term is used for convenience only and is not intended by the parties to confer to the Board of Directors any additional power or authority other than that expressly and specifically conferred pursuant to and in accordance with the terms of this Operating Agreement. Any power not otherwise delegated pursuant to this Operating

Agreement or by the Board of Directors in accordance with the terms of this Operating Agreement shall remain with the Board of Directors.

**4.2 Number of Directors** The number of Directors of the Company shall be currently fixed at seven (7) Directors, who shall initially be [John Wicker, George Hoyem, Robert Reddy, Ty Shipman, Gene Washington, Teresa Wren] and, subject to the terms hereof, St. Cloud shall have the right, but not the obligation, to designate one (1) member of the Board of Directors (the "St. Cloud Director"). The number of Directors may be changed from time to time, with the consent of the St. Cloud Director, by (i) Members holding at least two-thirds of the Units or (ii) a unanimous vote of the Directors (then serving as Directors).

**4.3 Tenure, Election and Qualifications** The Directors, except the St. Cloud Director, shall be elected at each meeting of the Members to hold office until such next annual meeting, or as otherwise provided below. Each Director, except the St. Cloud Director, shall serve until the earlier of (i) the election of such Director's successor, (ii) the removal of such Director in accordance with the terms of this Operating Agreement, (iii) such Director's resignation or (iv) such Director's death. Notwithstanding any other provision of this Agreement, in any election of Directors by the Members, there shall be no cumulative voting, and each Member must vote all of his or her Units for a single candidate from the slate of nominees. The persons receiving the greatest number of votes, up to the number of Directors to be elected, shall be deemed elected. The St. Cloud Director shall serve until the earlier of (i) the designation of such Director's successor by St. Cloud, (ii) the removal of such Director by St. Cloud, (iii) such Director's resignation, (iv) such Director's death, or (v) the first date upon which the balance of any obligation owed by the Company to St. Cloud as evidenced by a written promissory note made by the Company in favor of Saint Cloud (the "St. Cloud Note") is Five Thousand Dollars (\$5,000) or less.

(b) A Director may, but need not, be a Member.

**4.4 Resignation** A Director may resign at any time by giving written notice to the Members. The resignation of a Director shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**4.5 Removal** The entire Board of Directors or any Director may be removed at any time, with or without cause, by the affirmative vote of the Members holding at least two-thirds of the Units; provided that the St. Cloud Director may only be removed with the prior written consent of St. Cloud.

**4.6 Vacancies** Any vacancy occurring in the office of a Director shall be filled by a majority vote of the remaining Directors, though less than a quorum, or by a sole remaining Director; *provided, however*, a vacancy created by the removal of a Director may be filled only by the affirmative vote (or written consent) of Members holding at least two-thirds of the outstanding Units. Notwithstanding the foregoing, any vacancy occurring in the office of the St. Cloud Director may only be filled by St. Cloud.



**4.7 Meetings** Regular meetings of the Board of Directors shall be held at such times, mutually convenient places and dates as determined by the Board of Directors. The officers and other executives of the Company may attend meetings of the Board of Directors with the prior approval of the Board of Directors.

(a) Directors may participate in a meeting through use of conference telephone or similar communication equipment, so long as all Directors participating in such meeting can hear one another. Such participation constitutes presence in person at such meeting.

(b) Special meetings of the Board of Directors for any purpose may be called by (i) the Chief Executive Officer, (ii) any two (2) Directors or (iii) Members holding more than fifty percent (50%) of the Units then outstanding.

(c) Each Director shall receive notice of the date, time and place of all meetings of the Board of Directors at least ten (10) business days (forty-eight (48) hours if given personally or by facsimile, telegraph or electronic mail) before the meeting. Such notice shall be delivered in writing (which may be by facsimile, telegraph or electronic mail) to each Director. Such notice may be given by the Secretary of the Company or by the person or persons who called the meeting. Such notice shall specify the purpose of the meeting. Notice of any meeting of the Board of Directors need not be given to any Director who signs a waiver of notice of such meeting or a consent to holding the meeting, either before or after the meeting, or who attends the meeting without protesting prior to such meeting or at the commencement thereof. All such waivers, consents and approvals shall be filed with the records of the Company.

(d) Meetings of the Board of Directors may be held at any place that has been designated in the notice of the meeting.

(e) Any meeting of the Board of Directors, whether or not a quorum is present, may be adjourned to another time and place by the affirmative vote of a majority of the Directors present. If the meeting is adjourned for more than twenty-four (24) hours, notice of such adjournment to another time or place shall be given prior to the time of the adjourned meeting to the Directors who were not present at the time of the adjournment.

(f) Any action required or permitted to be taken by the Board of Directors may be taken without a meeting of the Board of Directors, if all the Directors individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the corporate records of the Company. Such action by written consent shall have the same force and effect as a unanimous vote of the Directors.

**4.8 Quorum and Transaction of Business** The number of Directors that constitutes a quorum for the transaction of business at a properly noticed meeting of the Board of Directors shall be a simple majority of the number of Directors then in office. Except as required by the Act or as otherwise set forth in this Operating Agreement, every act or decision done or made by at least a simple majority of the Directors present at a meeting duly held and at which a quorum is present shall be the act of the Board of Directors.

**4.9 Directors Have No Exclusive Duty to Company** The Directors shall not be required to manage the Company as their sole and exclusive function, and, subject to Section 7.4,

the Directors may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this Operating Agreement, to share or participate in such other investments or activities of the Directors or to the income or proceeds derived therefrom.

**4.10 Observer** At the election of St. Cloud, St. Cloud may designate an observer to attend all meetings of the Board and committees thereof (an “**Observer**”). The Company shall give to the Observer the same notice given to members of the Board of, and permit the Observer to attend, all meetings of its Board and all committee meetings thereof. The Observer will be entitled to receive all written materials and other information given to members of the Board in connection with such meeting at the same time such materials or information are given to such other members of the Board. If the Company proposes to take any action by written consent in lieu of a meeting of the Board or of any committee thereof, the Company shall give to the Observer the same notice it gives to the members of the Board, describing in reasonable detail the nature and substance of such action. The protections, rights to indemnification and reimbursement and limitations on liability set forth in Sections 8.1 and 8.2 shall apply to the Observer to the same extent that they apply to the Directors.

## ARTICLE V

### POWERS OF AND RESTRICTIONS ON THE DIRECTORS

**5.1 Management** Each Director shall participate in the direction, management and control of the business of the Company to the best of such Director’s ability. The Directors shall in all cases act as a group and shall have no authority to act individually. The Board of Directors may appoint one (1) or more officers to manage the day-to-day operations of the Company. The initial officers shall be as designated in Section 6.1 below and shall have the respective duties set forth in Section 6.2 below. The Board of Directors may adopt such rules and regulations for the management of the Company not inconsistent with this Operating Agreement or the Act. Except as otherwise provided in the Act or authorized pursuant to the terms of this Operating Agreement, no debt shall be contracted or liability incurred by or on behalf of the Company except by the Company’s Board of Directors.

**5.2 Additional Capital** Except as provided in Section 10.1, the Company shall not raise additional capital without the approval of the Board of Directors. No Member shall be required to make any additional contribution to the Company’s capital without the consent of such Member.

**5.3 Actions Requiring Board Approval** Without limiting the generality of Section 5.1, the Board of Directors may exercise all powers of the Company and do all such lawful acts and things, subject to any limitation set forth in the Act or this Operating Agreement.

**5.4 Additional Issuance of Units** The Company shall not issue additional Units without (i) the unanimous vote of the Board of Directors or (ii) the affirmative vote or written consent of the holders of at least two-thirds of the outstanding Units.

**5.5 Reports to Members** As soon as practicable after the end of any Fiscal Year but in any event within ninety (90) days thereafter, the Board of Directors shall provide to each of the Members a report setting forth the estimated closing Capital Accounts of each Member and a description of the manner of their calculation. As soon as practicable after the end of any Fiscal Year but in any event within one hundred twenty (120) days thereafter, the Board of Directors shall provide to each of the Members (i) a balance sheet, statement of income, statement of operations and statement of cash flows for such Fiscal Year, prepared in accordance with generally accepted accounting principles and accompanied by a report and opinion thereon by the Company's independent public accountants, and (ii) a final report setting forth the closing Capital Accounts of each Member and a description of the manner of their calculation. The Board of Directors shall also cause the Company to transmit within such one hundred twenty (120) day period to each Member of the Company and to each Person (or such Member's or Person's legal representative) who was a Member during any part of the Fiscal Year in question, a copy of the Company's income tax return for such Fiscal Year, together with a copy of the Member's Schedule K-1 thereto.

**5.6 Independent Public Accountants** An accounting firm selected by the Board of Directors shall be the Company's independent public accountants.

## **ARTICLE VI**

### **OFFICERS; COMMITTEES**

**6.1 Appointment of Officers** The Board of Directors may appoint officers of the Company which may include, but shall not be limited to: (a) chief executive officer; (b) president; (c) chief operating officer; (d) one or more executive vice presidents or vice presidents; (e) secretary; and (f) treasurer or chief financial officer. The Board of Directors may delegate their day-to-day management responsibilities to any such officers, and such officers shall have the authority to contract for, negotiate on behalf of and otherwise represent the interests of the Company as authorized by the Board of Directors in any job description created by the Board of Directors.

**6.2 Tenure and Duties of Officers** The Chief Executive Officer shall hold office at the pleasure of the Board of Directors and until his or her successor shall have been duly elected and qualified, unless sooner removed. The Chief Executive Officer may be removed at any time by the Board of Directors. If the office of Chief Executive Officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors. All other officers shall hold office at the pleasure of the Chief Executive Officer and may be removed and replaced by the Chief Executive Officer or the Board of Directors.

**(a) Duties of Chief Executive Officer.** The Chief Executive Officer shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and affairs of the Company. The Chief Executive Officer shall preside at all meetings of the Members, unless the Board of Directors shall have appointed another person to so preside and such person is present. The Chief Executive Officer shall perform other duties commonly incident to a chief executive officer of a California corporation and shall also perform



such other duties and have such other powers as the Board of Directors shall designate from time to time.

**(b) Duties of President.** The President may assume and perform the duties as defined by the Chief Executive Officer and/or the Board of Directors. The President shall perform other duties commonly incident to a president of a California corporation and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time.

**(c) Duties of Chief Operating Officer.** The Chief Operating Officer may assume and perform the duties as defined by the Chief Executive Officer and/or the Board of Directors. The Chief Operating Officer shall perform other duties commonly incident to a chief operating officer of a California corporation and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time.

**(d) Duties of Vice Presidents.** The Vice Presidents, in the order of their seniority, may assume and perform the duties of the President or Chief Operating Officer in the absence or disability of the President or Chief Operating Officer or whenever the office of President or Chief Operating Officer is vacant. The Vice Presidents shall perform other duties commonly incident to a vice president of a California corporation and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time.

**(e) Duties of Secretary.** The Secretary shall attend all meetings of the Members, and shall record all acts and proceedings thereof in the minute book of the Company. The Secretary shall give notice in conformity with this Operating Agreement of all meetings of the Members and Board of Directors requiring notice. The Secretary shall perform all other duties given him or her in this Operating Agreement and other duties commonly incident to a secretary of a California corporation and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time. The President may direct any Assistant Secretary to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform other duties commonly incident to the office of assistant secretary in a California corporation and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

**(f) Duties of Chief Financial Officer or Treasurer.** The Chief Financial Officer or Treasurer shall keep or cause to be kept the books of account of the Company in a thorough and proper manner, and shall render statements of the financial affairs of the Company in such form and as often as required by this Operating Agreement, the Board of Directors or the President. The Chief Financial Officer or Treasurer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Chief Financial Officer or Treasurer shall perform other duties commonly incident to the office of Chief Financial Officer or Treasurer in a California corporation and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time. The President may direct any Assistant Treasurer to assume and perform the duties of the Chief Financial Officer or Treasurer in the absence or disability of the Chief Financial

Officer or Treasurer, and each Assistant Treasurer shall perform other duties commonly incident to the office the Chief Financial Officer or Treasurer of a California corporation and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

**6.3 Creation of Committees** The Board of Directors may create committees to assist the Board of Directors and the officers in the governance of areas of importance to the Company. Subject to the terms of this Operating Agreement, such committees shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committees.

## ARTICLE VII

### RIGHTS AND OBLIGATIONS OF MEMBERS

**7.1 Limitation of Liability** Each Member's liability shall be limited as set forth in the Act and other applicable law. Except as otherwise provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be the debts, obligations and liabilities solely of the Company, and the Members of the Company shall not be obligated personally for any of such debts, obligations or liabilities solely by reason of being a Member of the Company.

**7.2 Nature of Rights and Obligations** Except as otherwise expressly provided herein, nothing contained in this Operating Agreement shall be deemed to constitute a Member an agent or legal representative of the other Members. A Member shall not have any authority to act for, or to assume any obligation or responsibility, on behalf of, any other Member or the Company.

**7.3 Member Access to Records** Upon written request of any Member, setting forth the purpose for such request, each Member shall have the right, during regular business hours, to inspect and copy such Company documents at the Member's expense as set forth in Section 11.8.

**7.4 Outside Activities** Except as may be provided in any written employment agreement or other written agreement between the Company and such person, each Member and Director and each Affiliate of each Member and Director shall be entitled to and may have business interests and engage in business activities in addition to those relating to the Company, and may engage in the ownership, operation and management of businesses and activities including serving on one (1) or more board of directors, for its own account and for the account of others, and may own interests in the same properties as those in which the Company or the other Members own an interest, without having or incurring an obligation to offer any interest in such properties, businesses or activities to the Company or any other Member, and no other provision of this Operating Agreement shall be deemed to prohibit any such Person from conducting such other businesses or activities. No provision of this Operating Agreement shall be construed to preclude any Member or Director or any of their respective Affiliates from engaging in or possessing an interest in any other business ventures of any nature or description, independently or with others, whether presently existing or hereafter created, and neither the

Company nor any Member shall have any rights in or to such independent ventures or the income or profits derived therefrom.

## ARTICLE VIII

### CERTAIN MATTERS CONCERNING MEMBERS, DIRECTORS AND EXECUTIVE OFFICERS

#### **8.1 Liability of Members, Directors and Officers; Indemnification.**

(a) No Member, Director or officer of the Company shall be liable, in damages or otherwise, to the Company or any Member for any act or omission performed or omitted to be performed by it in good faith (except for intentional misconduct or recklessness) pursuant to the authority granted to such Member, Director or officer of the Company by this Operating Agreement or by the Act.

(b) To the fullest extent permitted by the laws of the State of California and any other applicable laws, the Company shall indemnify and hold harmless each officer, Director and Member and their respective officers, directors, shareholders, members or partners (each, an "Indemnitee"), from and against any and all losses, claims, demands, costs, damages, liabilities (joint or several), expenses of any nature (including reasonable attorneys' fees and disbursements), judgments, fines, settlements and other amounts ("**Damages**") arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, in which an Indemnitee may be involved, or threatened to be involved, as a party or otherwise, arising out of or incidental to the business of the Company, regardless of whether an Indemnitee continues to be a Member, Director or an officer, director, shareholder, member or partner of such Member or Director or an officer of the Company at the time any such liability or expense is paid or incurred, except for any Damages based upon, arising from or in connection with any act or omission of an Indemnitee committed without authority granted pursuant to this Operating Agreement or in bad faith or otherwise constituting recklessness or intentional misconduct.

(c) Expenses (including reasonable attorneys' fees and disbursements) incurred in defending any claim, demand, action, suit or proceeding, whether civil, criminal, administrative or investigative, subject to Section 8.1(b) hereof, may be paid (or caused to be paid) by the Company in advance of the final disposition of such claim, demand, action, suit or proceeding upon receipt of an undertaking by or on behalf of the Indemnitee to repay such amount if it shall ultimately be determined, by a court of competent jurisdiction from which no further appeal may be taken or the time for any appeal has lapsed (or otherwise, as the case may be), that the Indemnitee is not entitled to be indemnified by the Company as authorized hereunder or is not entitled to such expense reimbursement.

(d) The indemnification provided by Section 8.1(b) hereof shall be in addition to any other rights to which an Indemnitee may be entitled under any agreement or vote of the Members or Board of Directors, as a matter of law or otherwise, both (i) as to action in the Indemnitee's capacity as a Member, Director or as an officer, director, employee, shareholder, member or partner of a Member, Director or Affiliate or as an officer of the Company, and (ii) as

to action in another capacity, and shall continue as to an Indemnitee who has ceased to serve in such capacity.

(e) Any indemnification hereunder shall be satisfied only out of the assets of the Company, and the Members shall not be subject to personal liability by reason of these indemnification provisions.

(f) The indemnification provided by this Section 8.1 shall be in addition to any other rights to which each Indemnitee may be entitled under any agreement or vote of the Members, as a matter of law or otherwise, both as to action in the Indemnitee's capacity as a Member or as an officer, director, employee, shareholder, member or partner of a Member or of an Affiliate, and shall inure to the benefit of the heirs, successors, assigns, administrators and personal representatives of the Indemnitee.

(g) The Company may purchase and maintain insurance on behalf of one (1) or more Indemnitees and other Persons against any liability which may be asserted against, or expense which may be incurred by, any such Person in connection with the Company's activities, whether or not the Company would have the power to indemnify such Person against such liability under the provisions of this Operating Agreement.

(h) An Indemnitee shall not be denied indemnification in whole or in part under this Section 8.1 because the Indemnitee had an interest in the transaction with respect to which the indemnification applies if the transaction was otherwise permitted by the terms of this Operating Agreement.

(i) The provisions of this Section 8.1 are for the benefit of each Indemnitee and its heirs, successors, assigns, administrators and personal representatives, and shall not be deemed to create any rights for the benefit of any other Persons.

**8.2 Other Matters Concerning the Members, Directors and Officers of the Company** Each Member, Director and officer of the Company may rely on, and shall be protected in acting or refraining from acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture or other paper or document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties.

(b) For purposes of this Operating Agreement, each Member, Director and officer of the Company may consult with legal counsel, accountants, appraisers, management consultants, investment bankers, other consultants and advisers reasonably selected by it and any written advice or written opinion of any such Person as to matters which such Member, Director and officer of the Company reasonably believes to be within such Person's professional or expert competence, and any act or omission, if done or omitted to be done in good faith reliance upon any such advice or opinion, will be conclusively presumed not to constitute fraud, gross negligence or willful or wanton misconduct.

## ARTICLE IX

### MEETINGS OF MEMBERS

**9.1 Meetings** The annual meeting of the Members shall be held on any date and time as the Board of Directors may designate. Additionally, unless otherwise prescribed by statute, a special meeting may be called by any Member or Members holding a majority of the Units outstanding.

**9.2 Place of Meetings** The Board of Directors may designate any place within the State of California or any other state, as the place of meeting for any meeting of the Members. If no designation is made, or if a special meeting is called by any Member or Members pursuant to Section 9.1, the place of meeting shall be the principal executive office of the Company.

**9.3 Notice of Meetings** Except as provided in Section 9.6, written notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not less than five (5) nor more than sixty (60) days before the date of the meeting, either personally, by mail or by electronic mail, by or at the direction of the Board of Directors or person calling the meeting, to each Member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered as provided in Section 17.1.

**9.4 Meeting of All Members** If all of the Members consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting lawful action may be taken.

**9.5 Record Date** For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any distribution, or in order to make a determination of Members for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declaring such distribution is adopted, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section 9.5, such determination shall apply to any adjournment thereof.

**9.6 Quorum** Members holding a majority of the Units, present in person or represented by proxy, shall constitute a quorum at any meeting of Members. In the absence of a quorum at any such meeting, Members holding a majority of the Units so represented may adjourn the meeting from time to time for a period not to exceed sixty (60) days without further notice. However, if the adjournment is for more than sixty (60) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at the meeting. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal during such meeting of Members holding Units whose absence would cause less than a quorum.



**9.7 Manner of Acting** The affirmative vote of Members entitled to vote holding a majority of the Units shall be the act of the Members unless the vote of a greater or lesser proportion or number is otherwise required by the Act or this Operating Agreement.

**9.8 Proxies** At all meetings of Members, a Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. Such proxy shall be filed with the Board of Directors of the Company before or at the time of the meeting. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy. Proxies may be conditional and/or irrevocable to the extent permitted by law.

**9.9 Action by Members Without a Meeting** Action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one (1) or more written consents describing the action taken, signed and delivered to the Secretary within sixty (60) days of the record date for that action, by Members having not less than the minimum number of votes that would be necessary to authorize or take that action at a meeting at which all Members entitled to vote on that action were present and voted. All such consents shall be delivered to the Secretary of the Company for inclusion in the minutes or for filing with the Company records. Action taken under this Section 9.9 shall be effective when such the number of consents required to authorize the proposed action shall have been received by the Secretary unless the consent specifies a different effective date. Any Member giving a written consent may revoke the consent by a writing received by the Secretary before written consents representing the number of votes required to authorize the proposed action have been received by the Secretary. The record date for determining Members entitled to take action without a meeting shall be the date the first Member signs a written consent.

**9.10 Waiver of Notice** When any notice is required to be given to any Member, a waiver thereof in writing signed by the person entitled to such notice, whether before, at or after the time stated therein, shall be equivalent to the giving of such notice.

## **ARTICLE X**

### **CONTRIBUTIONS TO THE COMPANY, CAPITAL UNITS AND CAPITAL ACCOUNTS**

**10.1 Capital Contributions** Each Member will make the Capital Contribution set forth on Schedule A hereto.

**10.2 Units; Unit Certificates** As of the date hereof, each Member's interest in the Company shall be represented by Units of membership interest, in the number set forth on Schedule A hereto. Additional Units (including new Classes of Units) may from time to time be issued in accordance with this Operating Agreement.

(b) The Company shall not issue certificates evidencing the Units issued by the Company, but the Units shall be subject to the following restrictions (in addition to any legend required under applicable state securities laws):

THE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), AND MAY NOT

BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER THE ACT OR UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY AND ITS COUNSEL THAT SUCH REGISTRATION IS NOT REQUIRED.

THE SALE, TRANSFER OR ASSIGNMENT OF THE SECURITIES ARE SUBJECT TO THE TERMS OF AN AGREEMENT BETWEEN THE COMPANY AND THE HOLDER HEREOF OR HIS PREDECESSOR IN INTEREST. COPIES OF SUCH AGREEMENT MAY BE OBTAINED BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD OF THIS CERTIFICATE TO THE SECRETARY OF THE COMPANY.

**10.3 Capital Accounts** A separate Capital Account will be maintained for each Member.

(i) To each Member's Capital Account there shall be credited (A) such Member's Capital Contributions, (B) such Member's distributive share of Net Profits and any items in the nature of income or gain which are specially allocated pursuant to Section 11.2 hereof, and (C) the amount of any Company liabilities assumed by such Member or which are secured by any Property distributed to such Member. The principal amount of a promissory note which is not readily traded on an established securities market and which is contributed to the Company by the maker of the note (or a Member related to the maker of the note within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(c)) shall not be included in the Capital Account of any Member until the Company makes a taxable disposition of the note or until (and to the extent) principal payments are made on the note, all in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(d)(2);

(ii) To each Member's Capital Account there shall be debited (A) the amount of money and the fair market value of any Property distributed to such Member pursuant to any provision of this Operating Agreement, (B) such Member's distributive share of Net Losses and any items in the nature of expenses or losses which are specially allocated pursuant to Section 11.2 hereof, and (C) the amount of any liabilities of such Member assumed by the Company or which are secured by any property contributed by such Member to the Company.

(b) In the event of a permitted sale or exchange of all or part of a Member's interest in the Company, the Capital Account of the transferor shall become the Capital Account of the transferee to the extent it relates to the transferred interest.

(c) The manner in which Capital Accounts are to be maintained pursuant to this Section 10.3 is intended, and shall be construed so as, to comply with the requirements of Code Section 704(b) and the Treasury Regulations promulgated thereunder.

**10.4 Withdrawal of Capital** A Member shall not be entitled to demand or receive from the Company the liquidation of his interest in the Company until the Company is dissolved in accordance with the provisions hereof and other applicable provisions of the Act.

## ARTICLE XI

### ALLOCATIONS, INCOME TAX, ELECTIONS AND REPORTS

**11.1 Allocation of Profits and LossesAllocation of Net Profits.** The Net Profits of the Company for each Accounting Period shall be allocated among the Members as follows:

(i) First, among the Members in an amount equal to the excess, if any, of (1) cumulative Net Losses allocated pursuant to Section 11.1(b)(i) and (ii) for all prior Accounting Periods, over (2) the cumulative Net Profits allocated pursuant to this Section 11.1(a)(i) for all prior Accounting Periods; and

(ii) Second, among the Members, in the manner that will most quickly cause the respective Adjusted Capital Account balances of the Members to be in proportion to such Members' respective Units; and

(iii) Then, to all Members in proportion to their respective Units.

**(b) Allocation of Net Losses.** The Net Losses of the Company for each Accounting Period shall be allocated among the Members as follows:

(i) First, among the Members in an amount equal to the excess, if any, of (1) cumulative Net Profits allocated pursuant to Section 11.1(a)(i) and (ii) for all prior Accounting Periods, over (2) the cumulative Net Losses allocated pursuant to this Section 11.1(b)(i) for all prior Accounting Periods; and;

(ii) Then, to the Members in proportion to their Adjusted Capital Account balances until all Member's Adjusted Capital Accounts have a balance of zero; and

(iii) Thereafter, to all Members in proportion to their respective Units.

**(c) Notwithstanding Sections 11.1(a) and (b):**

(i) If there is a net decrease in Company Minimum Gain (as hereafter defined) or Member Minimum Gain (as hereafter defined) during any fiscal year, the Members shall be allocated items of Company income and gain for such year (and, if necessary, for subsequent years) in accordance with Treasury Regulations Section 1.704-2(f) or Section 1.704-2(i)(4), as applicable.

(ii) Any Member Nonrecourse Deductions (as hereafter defined) for any fiscal year shall be specially allocated to the Member(s) who bears the economic risk of loss with respect to the Member Nonrecourse Debt (as hereafter defined) to which such Member Nonrecourse Deductions are attributable, in accordance with Treasury Regulations Section 1.704-2(i).

(iii) Items of Company income and gain shall be allocated to the Members in accordance with the "qualified income offset" requirements of Treasury Regulations Section 1.704-1(b)(2)(ii)(d).



(iv) To the extent any allocation of losses would cause or increase an Adjusted Capital Account Deficit (as hereafter defined) as to any Member, such allocation of losses shall be reallocated among the other Members in proportion to their respective Units, but in a manner that will not produce an Adjusted Capital Account Deficit as to any other Member.

(v) The allocations set forth in Sections 11.1(c)(i) through (iv) above (the “**Regulatory Allocations**”) are intended to comply with certain regulatory requirements, including the requirements of Treasury Regulations Sections 1.704-1(b) and 1.704-2. Notwithstanding, the provisions of Sections 11.1(a) and (b), the Regulatory Allocations shall be taken into account in allocating other items of income, gain, loss and deduction among the Members so that, to the extent possible, the net amount of such allocations of other items and the Regulatory Allocations to each Member shall be equal to the net amount that would have been allocated to each such Member if the Regulatory Allocations had not occurred.

(d) **Definitions.**

(i) “**Adjusted Capital Account Deficit**” means, with respect to any Member, the deficit balance, if any, in such Member's Adjusted Capital Account.

(ii) “**Company Minimum Gain**” has the meaning set forth in Treasury Regulations Section 1.704-2(b)(2) for the term “partnership minimum gain.”

(iii) “**Member Minimum Gain**” means gain attributable to Member Nonrecourse Debt determined in accordance with Treasury Regulations Section 1.704-2(i).

(iv) “**Member Nonrecourse Debt**” has the meaning set forth in Treasury Regulations Section 1.704-2(b)(4) for the term “partner nonrecourse debt.”

(v) “**Member Nonrecourse Deduction**” has the meaning set forth in Treasury Regulations Section 1.704-2(i)(2) for the term “partner nonrecourse deduction.”

(vi) “**Nonrecourse Deductions**” has the meaning set forth in Treasury Regulations Section 1.704-2(b)(1).

(e) **Tax Allocations.**

(i) Except as otherwise provided in this Section 11.1(e), each item of Company income, gain, loss and deduction shall be allocated for income tax purposes among the Members in the same manner as its correlative item of “book” income, gain, loss or deduction is allocated pursuant to this Section 11.1.

(ii) Notwithstanding Section 11.1(e)(i), income, gain, loss and deduction with respect to property contributed to the Company by a Member shall be allocated among the Members, pursuant to Treasury Regulations promulgated under Section 704(c) of the

Code, so as to take account of the variation, if any, between the adjusted basis of such property to the Company and its initial value. The Company shall account for such variation under any method approved under Section 704(c) of the Code and the applicable Treasury Regulations as chosen by the Board of Directors. If the Adjusted Asset Value of any Company asset is adjusted pursuant to the definition thereof, subsequent allocations of income, gain, loss and deduction with respect to such Company asset shall take account of any variation between the adjusted basis of such Company asset for federal income tax purposes and its Adjusted Asset Value in the same manner as under Code Section 704(c) and the Treasury Regulations promulgated thereunder under any method approved under Section 704(c) of the Code and the applicable Treasury Regulations as chosen by the Board of Directors. Allocations pursuant to this Section 11.1(e)(ii) are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing any Member's Capital Account or share of Net Profits, Net Losses and any other items or distributions pursuant to any provision of this Agreement.

**11.2 DistributionsMandatory Distributions.** Subject to applicable law and any limitations contained elsewhere in this Operating Agreement, the Board of Directors shall distribute cash to the Members pro rata based on the number of Units owned by the Members in an amount equal to the product of (i) the Tax Percentage and (ii) the Company's taxable income for such Fiscal Year determined in accordance with Section 703(a) of the Code as reflected on the Schedule K-1's in respect of each Unit (reduced by distributions made to such member during such Fiscal Year pursuant to Sections 11.2(b)). For purposes hereof, "Tax Percentage" shall mean initially fifty percent (50%) and shall be adjusted from time to time by the Board of Directors in response to changes in the tax rates applicable to individuals under the Code and under the state income tax laws of the State of California and in response to any other factors which cause the distributions under this Section 11.2(a) to be less than a Member's tax liability in respect of each Unit.

**(b) Additional Distributions.** Subject to applicable law and any limitations contained elsewhere in this Operating Agreement, the Board of Directors may elect from time to time to make additional distributions to the Members, and any such distributions shall be in proportion to such Members' respective Units.

**(c) Tax Withholding.** The Company shall comply with withholding requirements under federal, state and local law and shall remit amounts withheld to, and file required forms with, the applicable jurisdictions. To the extent the Company is required to withhold and pay over any amounts to any authority with respect to distributions or allocations to any Member, the amount withheld shall be treated as a distribution in the amount of the withholding to that Member. If the amount of withholding tax paid by the Company was not withheld from actual distributions, the Company may, at its option, (i) require the Member to promptly reimburse the Company for such withholding or (ii) reduce any subsequent distributions by the amount of such withholding. Each Member agrees to furnish the Company with any representations and forms as shall reasonably be requested by the Company to assist it in minimizing or eliminating and in determining the extent of, and in fulfilling, its withholding obligations.

**11.3 Limitation Upon Distributions** No distribution shall be declared and paid to a Member in violation of the Act.

(b) A Member who receives a distribution in violation of the Act shall be liable to the Company for the amount of the distribution to the extent provided in the Act.

**11.4 Accounting Principles** For financial accounting purposes, the profits and losses of the Company shall be determined in accordance with generally accepted accounting principles applied on a consistent basis under the accrual method of accounting.

**11.5 Interest on and Return of Capital Contributions** No Member shall be entitled to interest on its Capital Contribution or to return of its Capital Contribution. In addition, no Member shall have the right to withdraw any portion of such member's Capital Account. Except as required by the Company, no Member shall be personally liable to any other Member for the return of any Capital Contributions (or any additions thereto), it being agreed that any distribution as may be made from time to time shall be made solely from the assets of the Company and only in accordance with the terms of this Operating Agreement.

**11.6 Records and Reports** At the expense of the Company, the Directors shall maintain records and accounts of all operations and expenditures of the Company for a period of five (5) years from the end of the Fiscal Year during which the last entry was made on such record, the first two (2) years in the principal office of the Company. At a minimum the Company shall keep the following records:

(a) A current list of the full name and last known business address of each Director and each Member;

(b) A copy of the Articles and all amendments thereto, together with executed copies of any written powers of attorney pursuant to which the Operating Agreement and any certificate and all amendments thereto have been executed;

(c) Copies of the Company's federal, foreign, state and local income tax returns and reports, if any, for the three (3) most recent years;

(d) Copies of the Operating Agreement and all amendments thereto;

(e) True and full information regarding the status of the business and financial condition of the Company, including financial statements of the Company for the three (3) most recent years; and

(f) True and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each Member and which each Member has agreed to contribute in the future, and the date on which each became a Member.

**11.7 Returns and Other Elections** The Board of Directors shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company

does business. Copies of such returns, or pertinent information therefrom, shall be furnished to the Members within a reasonable time after the end of the Company's Fiscal Year. All elections permitted to be made by the Company under federal or state laws shall be made by the Board of Directors in its discretion.

**11.8 Tax Matters Partner** John Wicker is hereby designated the Tax Matters Partner of Company for purposes of Chapter 63 of the Code and the Treasury Regulations thereunder. The Tax Matters Partner shall employ experienced tax counsel to represent the Company in connection with any audit or investigation of the Company by the Internal Revenue Service and in connection with all subsequent administrative and judicial proceedings arising out of such audit. If the Tax Matters Partner is required by law or regulation to incur fees and expenses in connection with tax matters not affecting all the Members, then the Tax Matters Partner may, in its sole discretion, seek reimbursement from those Members on whose behalf such fees and expenses were incurred. The Tax Matters Partner shall keep the Members informed of all administrative and judicial proceedings, as required by Section 6223(g) of the Code, and shall furnish to each Member, if such Member so requests in writing, a copy of each notice or other communication received by the Tax Matters Partner from the Internal Revenue Service, except such notices or communications as are sent directly to such requesting Member by the Internal Revenue Service. The relationship of the Tax Matters Partner to the Members shall be that of a fiduciary, and the Tax Matters Partner shall have fiduciary obligations to perform its duties as Tax Matters Partner in such manner as will serve the best interests of the Company and all of the Company's Members. Except as set forth above, the Company will bear all expenses incurred by the Tax Matters Partner in carrying out his duties as such. To the fullest extent permitted by law, the Company agrees to indemnify the Tax Matters Partner and its agents and save and hold them harmless, from and in respect to all (i) fees, costs and expenses in connection with or resulting from any claim, action or demand against the Tax Matters Partner or the Company that arise out of or in any way relate to the Tax Matters Partner's status as Tax Matters Partner for the Company, and (ii) all such claims, actions, and demands and any losses or damages therefrom, including amounts paid in settlement or compromise of any such claim, action or demand; provided that this indemnity shall not extend to conduct by the Tax Matters Partner adjudged (i) not to have been undertaken in good faith or (ii) to have constituted recklessness, gross negligence or intentional wrongdoing by the Tax Matters Partner. The Tax Matters Partner may be changed by the Directors.

## ARTICLE XII

### TRANSFERABILITY

**12.1 Restrictions on Transferability** Except as provided in Sections 12.2(a) through (f), inclusive, no Member shall sell, assign, pledge, mortgage, or otherwise dispose of or transfer its interest in the Company without the prior written consent of the Board of Directors.

(b) In addition to other restrictions on transfer contained herein, each Member agrees that it will not make any disposition of all or any part of its interest in the Company which will result in the violation by it or by the Company of the Securities Act of 1933, as amended, or any other applicable securities laws.

**12.2 Right of First Offer** If at any time a Member wishes to transfer its interest, in whole or in part, such Member (the **"Proposed Transferor"**) shall send a written notice (the **"Transfer Notice"**) of such proposed transfer to the Board of Directors and each Member (as reflected on Schedule A hereto), which Transfer Notice shall describe all material terms of the proposed transfer including, without limitation, the number and class of Units proposed to be transferred (the **"Offered Units"**), the proposed purchase price per Unit, the terms of payment, and the time, location and closing date for the closing of the proposed transfer, which date for the closing shall not be less than forty (40) days after the date of such Transfer Notice. Except in the case of death or a transfers permitted by clause (f) below, in the event of a transfer by gift, property settlement or otherwise where the proposed transferee is not paying full fair market value in cash, the price shall be deemed to be the fair market value of the Proposed Transferor's interest in the Company payable in cash.

(b) The Board of Directors may elect to cause the Company (or any assignee) to accept the offer set forth in the Transfer Notice in whole, but not in part, and purchase the Offered Units within thirty (30) days after receipt of the Transfer Notice by giving notice (a **"Purchase Notice"**) to the Proposed Transferor. At the closing specified in the Transfer Notice, the Company (or any assignee) shall make payment of the purchase price specified in the Transfer Notice to the Proposed Transferor and the Board of Directors shall amend the Unit Register to reflect such transfer.

(c) If the Board of Directors does not submit to the Proposed Transferor a Purchase Notice covering the purchase of all the Offered Units upon the terms specified in the Transfer Notice within thirty (30) days after receipt of the Transfer Notice, then it may, at its discretion provide to the Members, pro rata in accordance with Units, within the period beginning thirty-one (31) days after receipt of the Transfer Notice and ending at the end of the fortieth (40<sup>th</sup>) day after receipt of the Transfer Notice, the right to accept the offer set forth in the Transfer Notice in whole, but not in part, and purchase the Offered Units by giving a Purchase Notice to the Proposed Transferor as described above. If not all of the Members elect to purchase their *pro rata* share of the Offered Units, then the Proposed Transferor shall promptly notify in writing the Members who do so elect and shall offer such Members the right to acquire such unsubscribed Units. Each Member shall have five (5) business days after receipt of such notice to notify the Proposed Transferor of its election to purchase all or a portion of the unsubscribed Offered Units. If the Members do not submit to the Proposed Transferor a Purchase Notice covering the purchase of all of the Offered Units upon the terms specified in the Transfer Notice within forty-five (45) days after receipt of the Transfer Notice, then the Proposed Transferor shall be permitted, during the sixty (60) day period following the date forty-five (45) days after receipt of the Transfer Notice, to sell all of the Offered Units for a price equal to or higher than, and upon terms the same as or more favorable to the Proposed Transferor than, the price and terms specified in the Transfer Notice. Copies of all notices under this Section 12.2 shall also be sent to the Company.

(d) Upon the closing of a sale of Offered Units in accordance with the terms of this Operating Agreement and the execution by the purchaser of such Offered Units of a counterpart of this Operating Agreement, such purchaser shall become an assignee of the Proposed Transferor's economic interest in the Company but shall not be admitted as a



Substitute Member of the Company without the consent of the Board of Directors and the Board of Directors shall amend Schedule A to reflect such transfer.

(e) The provisions of this Section 12.2 may be waived by the Board of Directors or with the approval of the holders of at least a majority of the outstanding Units.

(f) Anything to the contrary herein notwithstanding, the following transactions shall be exempt from the right of first offer provided for in this Section 12.2 and the restriction on transfer provided in Section 12.1(a):

(i) A Member's transfer during such Member's lifetime to such Member's immediate family or to any trustee for the benefit of such Member or such Member's immediate family (*i.e.*, spouse, lineal descendant, father, mother, brother or sister).

(ii) A Member's transfer to any person on death whether by will, trust or intestacy.

(iii) A transfer to the Company.

(iv) A transfer to the parent entity or a subsidiary of a Member.

In any such case, the transferee shall receive and hold such interest subject to the provisions of this Operating Agreement, including Section 12.2, and there shall be no further, transfer except in compliance with this Section 12.2.

## ARTICLE XIII

### ADDITIONAL AND SUBSTITUTE MEMBERS

**13.1 Admission of Additional Members and Substitute Members** Any Person acceptable to the Board of Directors may, subject to the terms and conditions of this Operating Agreement, become an Additional Member of the Company by the purchase of new Units for such consideration as the Board of Directors shall determine in accordance with the terms of this Operating Agreement. The Officers shall revise the Unit Register to reflect any such admission. Substitute Members shall be admitted as set forth in Section 12.2(d). Subject to approval by the Board of Directors, the Company may enter into agreements with Members providing for the repurchase of Units in certain events, including termination of employment or other relationship with the Company.

**13.2 Allocations to Additional Members and Substitute Members** No Additional Member or Substitute Member shall be entitled to any retroactive allocation of losses, income or expense deductions incurred by the Company. The Net Profits and Net Losses of the Company for each Accounting Period shall be allocated among the Members in proportion to their respective interests, with the Accounting Period being subject to adjustment pursuant to Section 1.1(a) upon the addition of an Additional or Substitute Member.

## ARTICLE XIV

### DISSOLUTION AND TERMINATION

**14.1 Dissolution** The Company shall be dissolved upon the occurrence of any of the following events (a “**Dissolution Event**”):

(a) the written agreement of Members holding at least two-thirds of the Units;  
or

(b) the entry of a decree of judicial dissolution under the Act.

Notwithstanding the foregoing, upon the occurrence of a Dissolution Event, if the business of the Company is continued by the consent of remaining Members holding a majority of the Units within ninety (90) days following the occurrence of any such event (or, if later, within a reasonable time after the Company becomes aware of such event), then the Company shall not be dissolved but shall be continued.

**14.2 Effect of Filing of Certificate of Cancellation** The Company shall cease to carry on its business, except insofar as may be necessary for the winding up of its business, upon the occurrence of a final dissolution event, but its separate existence shall continue until a Certificate of Cancellation has been filed with the Secretary of State of the State of California or until a decree dissolving the Company has been entered by a court of competent jurisdiction.

**14.3 Distribution of Assets Upon Dissolution** In settling accounts after dissolution, the liabilities of the Company shall be entitled to payment in the order of priority as provided by law in satisfaction of all liabilities and obligations of the Company whether by payment or the establishment of reasonable reserves therefor. The remaining assets of the Company shall be distributed to the Members in accordance with the positive balances of their Capital Accounts by the end of the taxable year in which the dissolution occurs or, if later, within 80 days after the date of dissolution.

**14.4 Winding Up** Except as provided by law, upon dissolution, each Member shall look solely to the assets of the Company for the return of its Capital Contribution. If the Company Property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the Capital Contribution of each Member, such Member shall have no recourse against any other Member. The winding up of the affairs of the Company and the distribution of its assets shall be conducted exclusively by the Board of Directors, who subject to the terms of this Operating Agreement, are hereby authorized to take all actions necessary to accomplish such distribution, including without limitation, selling any Company assets the Board of Directors deems necessary or appropriate to sell.

**14.5 Filing of Certificate of Cancellation** When all debts, liabilities and obligations have been paid and discharged or adequate provisions have been made therefor and all of the remaining property and assets have been distributed to the Members, a Certificate of Cancellation shall be executed and filed with the Secretary of State of the State of California, which certificate shall set forth the information required by the Act.

(b) Upon the acceptance of the Certificate of Cancellation, the existence of the Company shall cease, except for the purpose of suits, other proceedings and appropriate action as provided in the Act.

## **ARTICLE XV**

### **MERGER**

**15.1 Merger** The Company may upon a vote of the Members of the Company holding at least two-thirds of the Units, merge pursuant to an agreement of merger with or into one (1) or more entities formed or organized under the laws of the State of California or any other state of the United States or any foreign country or other foreign jurisdiction to the extent permitted under the Act, with such entity as the agreement shall provide being the surviving or resulting entity.

**15.2 Vote Relating to Merger or Consolidation** A merger by the Company and any other entity shall be approved by the Board of Directors and Members holding at least two-thirds of the Units.

**15.3 Exchange Relating to Merger** Rights or securities of, or interests in, the Company or other entity that is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, an entity which is not the surviving or resulting entity in the merger or consolidation. In the event of any such transaction, including a Reincorporation or Capital Transaction, Units of the Company shall be exchanged for interests in the new or successor entity based upon the respective Adjusted Capital Account balances of the Members, immediately prior to the Merger, including any allocation of Net Profit or Net Loss pursuant to Article XI in connection with such transaction.

**15.4 Filing and Effect of Certificate of Merger** If the Company enters into an agreement of merger, the surviving entity shall file a Certificate of Merger in the Office of the Secretary of State of the State of California containing the information required by the Act. Unless a future date is provided for in such Certificate of Merger, the effective date shall be the date of filing with the Secretary of State of the State of California.

**15.5 Amendment of Old or Adoption of New Operating Agreement** An agreement of merger approved in accordance with Section 15.2 may effect any amendment to the Company's Operating Agreement or effect the adoption of a new Operating Agreement for the Company or the surviving entity, as the case may be. Any amendment of the Operating



Agreement or adoption of a new Operating Agreement shall be effective at the effective time or date of the merger.

**15.6 Assumption of Assets and Liabilities** When any merger shall have become effective under this Article XV, for all purposes of the laws of the State of California, all of the rights, privileges and powers of the Company and each of the other entities that have merged, and all property, real, personal and mixed, and all debts due or incurred to or by any of the constituent parties, as well as all other things and causes of action belonging to each of such parties to the merger, shall be vested in the surviving or resulting entity, and shall thereafter be the property or obligation of the surviving or resulting entity, and the title to any real property vested by deed or otherwise shall not revert or be in any way impaired.

## **ARTICLE XVI**

### **BINDING ARBITRATION OF DISPUTES**

**16.1 Binding Arbitration** Any dispute, claim or controversy of whatever nature arising out of or relating to this Operating Agreement or a Member's employment or other relationship with the Company (including any other agreement(s) contemplated hereunder), including, without limitation, any action or claim based on tort, contract, or statute, or concerning the interpretation, effect, termination, validity, performance and/or breach of this Operating Agreement, shall be resolved by final and binding arbitration administered by the San Francisco office of the American Arbitration Association (the "Administrator").

Notwithstanding the foregoing or any other provision contained in this Article XVI, the parties shall have the right to request one or more provisional remedies from a court of competent jurisdiction pursuant to California Code of Civil Procedure Section 1281.8.

**16.2 Initiation** Arbitration shall be initiated in the following manner:

(a) **Timing.** Unless barred by an applicable statute or period of limitations, either party may initiate an arbitration at any time after a dispute has arisen by serving upon the other party and filing with the Administrator a written Demand for Arbitration, including a general description of the nature of the claim and the nature and amount of damages and/or other relief sought (the "Demand for Arbitration"). A claim shall be forever barred if on the date the Demand for Arbitration is filed with the Administrator, the claim, if asserted in a civil action, would be barred under law by an applicable statute or period of limitations.

(b) **Response.** If the responding party desires to file a response and/or counterclaim to the Demand for Arbitration, it must do so within twenty (20) calendar days after service of the Demand for Arbitration. Any response to a counterclaim shall be filed and served within ten (10) calendar days after service of the counterclaim, but no such response shall be required. A failure to file a counterclaim or response will not operate to delay the arbitration proceedings.

(c) **Further Pleadings.** After the filing of the Demand for Arbitration, any counterclaim, and/or any responses thereto, no further claims or counterclaims may be made except by order of the arbitrator made on a duly noticed motion to the arbitrator.

**16.3 Appointment and Powers of Arbitrator** The dispute shall be submitted to a single arbitrator chosen by the parties from a list of potential arbitrators provided by the Administrator. The parties shall use their best efforts to cause the Administrator to provide such list to the parties within fifteen (15) days after the Demand for Arbitration is filed. Should the parties be unable to agree on a choice of arbitrator within ten (10) days after receipt of the list from the Administrator, then either party may request the Administrator to furnish a list of three (3) names and each side may strike one (1) name, thereby nominating the remaining person as the arbitrator. If more than one (1) name remains, the Administrator shall choose an arbitrator from the list of remaining names.

If the designated arbitrator shall die, become incapable of, unwilling to, or unable to serve or proceed with the arbitration, the Administrator shall appoint a replacement arbitrator, and such replacement arbitrator shall have all such powers as if he or she had been originally appointed as the arbitrator.

Should either party refuse or neglect, after reasonable notice, to furnish the arbitrator with any papers or information demanded or to attend hearings before the arbitrator, the arbitrator is empowered by both parties to proceed with the remainder of the arbitration process set forth in this Article XVI.

The arbitrator is authorized to issue an award for compensatory damages, and/or to grant any equitable remedy or relief he or she deems just and equitable and within the scope of the Agreement of the parties, including, but not limited to, an injunction or order for specific performance. The arbitrator shall not have the authority to award punitive damages.

**16.4 Costs and Fees** The arbitrator, in his or her discretion, shall be authorized to determine whether a party is the prevailing party, and if so, to award to that prevailing party reimbursement for its share of the costs and fees of the Administrator and the arbitrator, and reimbursement for its reasonable attorneys' fees, disbursements (including, for example, expert witness fees and expenses, photocopy charges, travel expenses, etc.), and costs arising from the arbitration. However, until any such order is issued, the parties shall bear equally the costs and fees of the Administrator and the arbitrator.

**16.5 Location and Date of Arbitration Hearing** The arbitration shall be held in San Francisco, California, and shall commence no later than sixty (60) days following the service of the Demand For Arbitration, or as soon thereafter as practicable.

**16.6 Pre-Hearing Conferences** Within thirty (30) days of the time that the arbitrator is chosen, the arbitrator shall hold a Pre-Hearing Conference with the parties for the purpose of narrowing the issues and in all respects arranging for the most expeditious hearing possible of the matters in dispute.

**16.7 Conduct of the Arbitration Hearing** The arbitration hearing shall be conducted according to the discretion of the arbitrator. Judicial rules relating to the order of proof, the conduct of the hearing and the presentation and admissibility of evidence need not be followed. Any relevant information, including hearsay, may be admitted by the arbitrator regardless of its admissibility as evidence in court, but the arbitrator also shall be authorized to exclude evidence.

The parties shall have the power to subpoena witnesses to attend the arbitration hearing pursuant to California Code of Civil Procedure. The arbitrator shall have full power to give such directions and to make such orders in the conduct of the arbitration, including setting pre-arbitration procedures and scheduling any motions to correct or amend the arbitration award, as he or she deems just and appropriate.

**16.8 Award** The Arbitrator shall, within fifteen (15) calendar days after the conclusion of the Arbitration hearing, or as soon as it is practicable issue a written award and a brief written statement of decision describing the reasons for the award, including the calculation of any compensatory damages awarded.

**16.9 Survival** The provisions in this Article XVI shall survive and apply in all events, including, without limitation, after the breach, repudiation and/or termination of this Operating Agreement or any other related documents.

**16.10 Satisfaction of Award** Absent the filing of an application to correct or vacate the arbitration award under California Code of Civil Procedure, each party shall fully perform and satisfy the terms of the arbitration award within fifteen (15) days of the service of the award.

**16.11 Finality of Award** The award of the arbitrator shall be final and binding upon the parties without appeal or review except as permitted by California law. Any party may apply to any court of competent jurisdiction for confirmation and entry of judgment based on said award. In connection with any application to confirm, correct or vacate the arbitration award, any appeal of any order rendered pursuant to any such application, or any other action required to enforce the arbitration award, the prevailing party shall be entitled to recover its reasonable attorneys' fees, disbursements and costs incurred in such post-arbitration award activities.

## ARTICLE XVII

### MISCELLANEOUS PROVISIONS

**17.1 Notices** Any notice, demand or communication required or permitted to be given by any provision of this Operating Agreement shall be in writing and shall be deemed effectively given or delivered upon receipt. Any such notice, demand or communication may be given: (a) by personal delivery to the party to be notified; (b) by confirmed telex, telegraph or facsimile; or (c) by mail or courier. All communications shall be delivered to a Director, a Member or the Company, as appropriate, to such Director's, such Member's or the Company's address or facsimile number as such appears in the Company's records as of the date hereof or to such other address or facsimile number as such Member, such Director or the Company may designate by ten (10) days advance written notice to the other parties hereto.

**17.2 Application of California Law** This Operating Agreement, and the application or interpretation hereof, shall be governed exclusively by its terms and by the laws of the State of California (without giving effect to principles of conflicts of laws).

**17.3 Waiver of Action for Partition** Each Member irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the property of the Company.

**17.4 Amendments** Any amendment to this Operating Agreement may be proposed to the Members by (i) the Board of Directors or (ii) Members holding at least a majority of the Units that would be outstanding. A vote on an amendment to this Operating Agreement shall be taken within sixty (60) days after notice thereof has been given to the Members unless such period is otherwise extended by applicable laws, regulations, or agreement of the Members. A proposed amendment shall become effective at such time as it has been approved by Members holding a majority of the Units. Notwithstanding the foregoing, any amendment to this Operating Agreement that alters or changes the voting or other powers, preferences, or other special rights or privileges, or restrictions of the Units so as to affect them adversely, shall become effective at such time as it has been approved by Members holding at least two-thirds of the Units. In no event shall any amendment, merger, reorganization or other event or action disproportionately affect the interest of any Member or change the limited liability nature of the Member's interest, without the consent of the Member affected.

**17.5 Execution of Additional Instruments** Each Member hereby agrees to execute such other and further statements of interest and holdings, designations, powers of attorney and other instruments necessary to comply with any laws, rules or regulations.

**17.6 Construction** Whenever the singular number is used in this Operating Agreement and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders and vice versa. This Operating Agreement is prepared and executed in the English language only and any translation of this Operating Agreement into any other language shall have no effect.

**17.7 Headings** The headings in this Operating Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Operating Agreement or any provision hereof.

**17.8 Waivers** The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Operating Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

**17.9 Rights and Remedies Cumulative** The rights and remedies provided by this Operating Agreement are cumulative, and the use of any one (1) right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Such rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

**17.10 Severability** If any provision of this Operating Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Operating Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

**17.11 Heirs, Successors and Assigns** Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Operating Agreement, their respective heirs, legal representatives, successors and assigns.

**17.12 Creditors** None of the provisions of this Operating Agreement shall be for the benefit of or enforceable by any creditor of the Company.

**17.13 Counterparts** This Operating Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one (1) and the same instrument.

**17.14 No Third Party Beneficiaries** It is understood and agreed among the parties that this Operating Agreement and the covenants made herein are made expressly and solely for the benefit of the parties hereto, and that no other Person, other than an Indemnitee under Article VIII hereof (but only in respect of the rights under such Article VIII), shall be entitled or be deemed to be entitled to any benefits or rights hereunder, nor be authorized or entitled to enforce any rights, claims or remedies hereunder or by reason hereof.

**17.15 Complete Agreement** This Agreement and the Articles constitute the complete and exclusive statement of agreement among the Members with respect to the subject matter herein and therein and replace and supersede all prior written and oral agreements or statements by and among the Members or any of them with respect to the subject matter hereof. To the extent that any provision of the Articles conflicts with any provision of this Agreement, the Articles shall control.

By executing this counterpart of the Operating Agreement of TEGSCO, LLC, the undersigned Member of TEGSCO, LLC agrees to be bound by the terms and conditions of the Amended and Restated Operating Agreement of TEGSCO, LLC.

**MEMBER:**

---

(signature)

---

(print name)





## Office of the Secretary of State

July 19, 2010

RE: Tegsco, LLC  
File Number: 801294740

It has been our pleasure to file the application for registration and issue the enclosed certificate of filing evidencing the authority of the foreign limited liability company (llc) to transact business in Texas.

Unless exempted, the foreign entity is subject to state tax laws, including franchise tax laws. Shortly, the Comptroller of Public Accounts will be contacting the entity at its registered office for information that will assist the Comptroller in setting up the franchise tax account for the foreign entity. Information about franchise tax, and contact information for the Comptroller's office, is available on their web site at <http://window.state.tx.us/taxinfo/franchise/index.html>.

The registered foreign entity is not required to file annual reports with the Secretary of State. An application for amended registration must be filed with the Secretary of State if the foreign entity changes its name, changes the purposes to be pursued in Texas, or changes the assumed name it elected to use on its application for registration. It is important for the foreign entity to continuously maintain a registered agent and office in Texas. Failure to maintain an agent or office or file a change to the information in Texas may result in the revocation of the entity's registration by the Secretary of State.

If we can be of further service at any time, please let us know.

Sincerely,

Corporations Section  
Business & Public Filings Division  
(512) 463-5555

Enclosure





# City of Austin

## Purchasing Office, Financial Services Department

P.O. Box 1088, Austin, TX 78767

January 29, 2015

Delivered by Email: [jwicker@autoreturn.com](mailto:jwicker@autoreturn.com)

Mr. John Wicker  
Chief Executive Officer  
TEGSCO, LLC/AutoReturn  
450 7<sup>th</sup> Street  
San Francisco, CA 94103

Subject: RFP EAD0119REBID, Request for Additional Information

Dear Mr. Wicker.:

According to the terms of the Request for Proposal, Section 0500-Scope of Work, Subsection 4.0-Contractor Minimum Requirements, (A)(3), the City is submitting this formal request for additional financial information. Following is the information and items being requested.

1. The point of contact, including email address and telephone number for the City of San Francisco that will have information concerning the \$1,000,000 line of credit issued as security for performance of the contract.
2. The point of contact, including email address and telephone number for the City of Indianapolis that will have information concerning financial aspects of the contract.
3. How do customers payments flow and which parties (cities, tow operators) could be left as creditors in a bankruptcy?
4. What is the average pass-through time from initial tow service to City receipt of funds?
5. What is the current cycle (weekly, monthly, etc.) for payments to cities? Does it vary among different cities?
6. What are the current restricted cash balances (by amount and party requiring the restriction)
7. For each restricted cash balance, what is the purpose and condition of disbursement?
8. Does the restriction impact whether the balances can be isolated in any way during a bankruptcy proceeding?
9. Do any cash accounts currently exceed the Federal Depository Insurance maximum?
10. Is AutoReturn competing for the successor San Francisco contract? When will the award be announced? What is the impact to AutoReturn's business should it not receive the award?
11. What are the terms of AutoReturn's indemnification of San Francisco (amount, time period, conditions, and position in hierarchy of creditors) and how is the City of Indianapolis contract related to San Francisco's indemnification, if applicable? (Reference: Page 22 -Appendix B-AutoReturn's Proposal)
12. Is the standby letter of credit issued to guarantee performance of the San Francisco contract sill open? If so, what are the terms and the trigger mechanisms? (Reference: Page 14-Appendix B-AutoReturn's Proposal)
13. How is the San Francisco referral fee calculated? Why did the San Francisco referral fee drop from \$1,107,000 to \$1,033,000 in 2013? What amount was the fee for 2014? (Reference: Page 12-Appendix B-AutoReturn Proposal)

14. What is the purpose of the royalty fee paid to a member? How is it calculated? What amount(s) were paid in 2014? (Reference: Page 12-Appendix B-AutoReturn Proposal)
15. What amounts were paid to the City of Indianapolis in 2014? What amounts were paid to all other AutoReturn customers in 2014?
16. What is the current status of the Pennsylvania State Police contract? (Reference: Page 13-Appendix B-AutoReturn Proposal)
17. Please provide in comparable format and structure to 2013 financial statement, a copy of 2014 preliminary financial statements
18. Please provide an accounts receivable aging reports for the current period and as of December 31, 2013.
19. Please provide the name and amount of the largest five (5) accounts receivable accounts, current and as of December 31, 2013.
20. Who is the current collection agency for accounts receivables?
21. As of December 31, 2014, what is the current weighting of gross revenues by customer (by %).
22. For each current customer, what is the contract expiration date?
23. Does AutoReturn have any lines of credit? If so, what are the terms (amount, interest rate, draw structure, restrictions on use, etc.) and what are the current outstanding balances?
24. Are members guaranteeing any outstanding lines of credit? If so, which members and for what amounts and terms?
25. Has the expired Zurich performance bond been replaced? If so, what are the terms (insurer or surety, amount, cost, terms of activation)
26. Please list all debt by lender as of December 31, 2014, including amounts and terms.
27. What, if any, additional borrowing has occurred since December 31, 2013 and under what terms?
28. What is the quarterly interest payment and principal maturity schedules for all outstanding liabilities for the next three (3) years?
29. Are there any outstanding liabilities where lenders can demand payment or conversion ahead of the scheduled maturity date?
30. What is the current schedule of subordination for all outstanding debts?
31. Please provide an accounts payable aging report, current and as of December 31, 2013.
32. What are the future minimum annual lease payments for 2015 and 2016? (Reference: Page 22-Appendix B-AutoReturn Proposal)
33. What is the current number of members of TEGSCO, LLC ("AutoReturn")?
34. How many members are individuals or entities who provide towing services?
35. How many member have notes-receivable outstanding? For the five (5) largest receivable member balances, what are their repayment schedules?
36. What amount of related-party expenses were incurred in 2014?
37. Has the collective bargaining agreement been renewed since December 31, 2013? If so, were the any significant changes to any financial terms?
38. Reference Appendix B wherein AutoReturn states that they are "currently profitable"; what information and measures is this statement based upon?



# City of Austin

## Purchasing Office, Financial Services Department

P.O. Box 1088, Austin, TX 78767

The City requests that the information be provided no later than Tuesday, February 3, 2015 at 5 P.M., CST. The City would request that Items Number 1 and 2 in the above list be provided as soon as practical.

Should you have any questions, please contact me at (512) 974-1714.

Sincerely,

Monica L. McClure  
Corporate Contract Administrator  
Purchasing Office  
Financial Services Department

cc: Teresa Reddy, Contract Compliance Manager  
Yolanda Miller, Deputy Purchasing Officer  
Urcha Dunbar-Crespo, Acting Purchasing Officer  
Mary-Ann Carney, Austin Police Department, Financial Manager

#### Cash payment flow:

- how do customer payments flow, and which parties (cities, tow operators) could be left as creditors in a bankruptcy
- what is the average pass-thru time, from initial tow service to city receipt of funds
- what is the current cycle (weekly, monthly) for the payments to cities, and does it vary among different cities

#### Cash:

- what are the current restricted cash balances (by amount and party requiring the restriction)
- for each balance, what is the purpose and conditions of disbursement
- does the restriction impact whether the balances can be isolated in any way during a bankruptcy process
- do any cash accounts currently exceed the Federal insurance maximum

#### Other contracts:

- Is the vendor competing for the successor SF contract
  - o When will the award be announced
  - o What is the impact to the vendor's business outlook if they don't receive this award
- What are the terms of the vendor's indemnification of San Francisco (amount, time period, conditions, position in hierarchy of creditors), and how is the Indianapolis contract related to the SF indemnification – page 22
- Is the standby letter of credit issued for performance of the SF contract still open; if so, what are the terms and trigger mechanism – page 14
- How is the SF referral fee calculated, why did the SF referral fee drop from \$1,107,000 to \$1,033,000 in 2013, and what amount was the fee for 2014 – page 12
- What is the purpose of the royalty fee paid to a member, how is it calculated, and what amount was paid in 2014 – page 12
- What amount was paid in 2014 to Indianapolis and all other customers in 2014
- What is the current status of the Pennsylvania State Police contract mentioned on page 13

#### 2014 preliminary financial statements

- Provide in comparable format and structure to allow comparison with 2013 statements
- Who is engaged to audit the 2014 financial statements

#### Accounts receivable:

- Provide accounts receivable aging reports (current and as of 12/31/2013)
- Provide name and amount of largest 5 A/R accounts (current and as of 12/31/2013)
- Who is the current collection agency





TO: Veronica Lara, Director  
Department of Small and Minority Business Resources

FROM: Erin D'Vincent, Senior Buyer Specialist

DATE: August 6, 2014

SUBJECT: Request for Determination of Goals for Solicitation No. EAD0119REBID  
Project Name: Total Management of Dispatch, Towing, and Impound Services  
Commodity  
Code(s): 96890  
Estimated Value: Revenue generating contract – estimated at \$850,000 annually

Below are scopes of work for this project as determined by the Purchasing Office and Department that are contained in this solicitation.

The Departmental Point of Contact is: Mary Ann Carney at Phone: 974-4543

Per paragraph 8.2.1 of the Rules Governing the Minority and Women Owned Business Enterprise Procurement Program, please determine the use of goals by completing and returning the below endorsement. If you have questions, please call me at 972-4017.

☐ Approved w/ Goals

☒ Approved, w/out Goals

Recommend the use of the following goals based on the below reasons:

a. Goals: \_\_\_\_\_ % MBE \_\_\_\_\_ % WBE

b. Subgoals \_\_\_\_\_ % African American \_\_\_\_\_ % Hispanic

\_\_\_\_\_ % Native/Asian American \_\_\_\_\_ % WBE

This determination is based on the following reasons: The City of Austin Purchasing Office has worked with the Small & Minority Business Resources Department (SMBR) to determine that at the release of this solicitation that no goals are appropriate. Additionally at this time there are NO MBEs, WBEs and DBEs firms certified with the City of Austin in the scopes identified in this solicitation however if subcontracting opportunities are identified after the contract

Veronica Lara, Director

Date: 8/12/14

cc: Lorena Resendiz

Cont  
Award the M/WBE Procurement Ordinance will apply. SPK

## REFERENCE CHECK WORKSHEET

Date of Reference: 9/19/2014	Solicitation Name: Total Management of Dispatch, Towing, and Impound Services for the Austin Police Department
Solicitation Number: RFP EAD0119REBID	Company Name: San Francisco Municipal Transportation Agency
Contact Name: Steven Lee	Contact Phone Number: (415) 701-4592
Contact Email Address: steven.lee@sfmta.com	

**Place an "X" under the answer that applies and complete the open ended questions below.**

1. Tell me about your agency.

Comments: We move regular cars and also busses on the street.

2. Describe the work this vendor did for you/what types of service are you getting from the vendor?  
What was the project size?

Comments: AutoReturn serves as a centralized dispatch. They don't own tow trucks of their own. It's technically a driven dispatch service. They provide excellent customer service. They are tasked with retrieval of fees. We handle the procedure of liens at auctions.

Initially, when we signed our contract with them, our volume was about 75,000 vehicles annually. Now it's only at 47,000.

3. Why did you choose this vendor? What due diligence did you perform to select this vendor?

Comments: The previous vendor we had issues with legally and politically. We were getting 30+ complaints a month. AutoReturn was the top ranked firm out of three that we were looking to do business with. We took them through the competitive bid process. They submitted their proposal which we reviewed. We checked their references. When we started using them, they were brand spanking new. They created an innovative tow service. They really focus on customer service. They make sure the customer's needs are handled. They are trying to be as technologically advanced to make it as painless as possible for the customer.

4. Was the contract successfully completed?

YES

☒

NO

☐

Please explain why or why not. We just recently extended our contract with them for five more years through 2015.

5. Was it completed on time and within budget? ☒ ☐

If not please describe. On time, doesn't really apply. They've met the service level requirements. We stipulated that they have to tow the vehicle within 25 minutes of the call. They've exceeded those expectations.

There's no budget to it. What they proposed is what they charge.

6. Have you experienced any invoice issue from the vendor? ☐ ☒

If so please describe. The contract is a revenue contract. They collect the city's administrative costs. We don't get invoices from them. They remit to the city revenues to us related to the tow.

7. Were there changes to the original contract during the project? ☒ ☐

If so please explain. We've had to adjust our admin fees, AutoReturn costs, as well as what is charged to the customer.

8. Would you choose this vendor again? ☒ ☐

Please explain why or why not. We extended their agreement. If we weren't happy with them, we wouldn't have done that.

Describe the following:

9. The vendor's work quality

Comments: It's excellent. The number of complaints that we used to get has dropped to a handful on an annual basis. You wouldn't even have to remove your shoes to count. They handle it properly and efficiently. Their responsiveness and knowledge of their own business is very good.

10. The vendor's ability to meet the contract specifications and scope. Do you find the vendor to be knowledgeable?

Comments: Excellent. Very knowledgeable, yes. Scary knowledgeable sometimes.

11. The vendor's responsiveness to your concern/emails/calls

Comments: Right up there. Number 1. Very responsive. Excellent.

12. The vendor's overall performance



Comments: I would give them a 99 on a scale from 1 to 100. They walk the walk not just talk the talk. They actually follow through with what they say they will do.

13. Is there any other information you would like to share about this company?

Comments: No, I covered most of everything. In terms of contractor/municipality, sometimes you have to remind them not to be so political. Sometimes they are so responsive that we have to ask them to slow down.

Reference Check Completed by: Katie Greenwood



## REFERENCE CHECK WORKSHEET

Date of Reference: 9/22/2014	Solicitation Name: Total Management of Dispatch, Towing, and Impound Services for the Austin Police Department
Solicitation Number: RFP EAD0119REBID	Company Name: Indianapolis & Marion County Code Enforcement
Contact Name: Patrick O'Connor/Lacey	Contact Phone Number: (317) 327-5596
Contact Email Address: patrick.o'connor@indy.gov	

**Place an "X" under the answer that applies and complete the open ended questions below.**

1. Tell me about your company.

Comments: We are the department of code enforcement not law enforcement. The police order the tows for the most part. We manage the contract for AutoReturn. Year 1 of the contract was from July 1, 2013, through June 30, 2014. We did just under 25,000 tows that first year.

2. Describe the work this vendor did for you/what types of service are you getting from the vendor? What was the project size?

Comments: They do dispatch tows as requested by the police (i.e. Arrests, DUIs, accident scenes, etc.). They tow fleet (i.e. emergency vehicles, department of public works trucks, etc.). They did approximately 2,300 citywide fleet tows in the same period mentioned above. They also will tow abandoned vehicles.

3. Why did you choose this vendor? What due diligence did you perform to select this vendor?

Comments: They were one of five that bid. Myself and four others were on the selection committee. Their rates were the best as well as overall presentation. They have a very strong project management team. We listened to the numerous presentations. We checked references primarily in Baltimore, Kansas City, and San Francisco.

- |   |                                     |                          |
|---|-------------------------------------|--------------------------|
|   | YES                                 | NO                       |
| 4. Was the contract successfully completed? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Please explain why or why not. We are still in the five year contract-in the first third of it.

- |  |                                     |                          |
|--|-------------------------------------|--------------------------|
|  | YES                                 | NO                       |
| 5. Was it completed on time and within budget? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

If not please describe.

6. Have you experienced any invoice issue from the vendor? ☒ ☐

If so please describe. Systemic invoicing issues on the fleet side. Our Public Works pays AutoReturn for towing city vehicles. There have been some issues along those lines. They always make honest efforts to resolve those, but there are still issues. That may be predicated on problems with our Public Works not entirely the fault of AutoReturn.

7. Were there changes to the original contract during the project? ☒ ☐

If so please explain. Yes, one amendment so far in May of this year. The singular biggest component was a request from AutoReturn to lower the threshold of response times from 95 to 85 percent.

8. Would you choose this vendor again? ☒ ☐

Please explain why or why not. I think the problems they have had are problems any company would have with this size. Some of it is due to weather factors and construction around the city.

Describe the following:

9. The vendor's work quality

Comments: Their standards are very high. Much of their interaction is between them and their subcontractors. They demand pretty high standards. Their staff clearly wants to do well.

10. The vendor's ability to meet the contract specifications and scope. Do you find the vendor to be knowledgeable?

Comments: I would say they have an adequate ability to do so. Yes.

11. The vendor's responsiveness to your concern/emails/calls

Comments: Impeccable.

12. The vendor's overall performance

Comments: On a scale of one to ten, I'd give them an eight. Probably a year from now, it'd be higher. They're brand new to the city. It takes a while.

13. Is there any other information you would like to share about this company?

Comments: They are from out of state. That can be a hard sale in terms of media optics. AutoReturn does a great job of bringing on a very robust group of local contractors. They have

hired at least 20 employees from the City. I personally like that business model. Towing is not the most functional group. It's very combative in some places. There are a lot of issues between companies. It has been nice that AutoReturn has picked people outside of that. They come in unbiased and give the local companies a bite of the apple. If you have any additional questions or need clarification, please feel free to call me.

Reference Check Completed by: Katie Greenwood



## REFERENCE CHECK WORKSHEET

Date of Reference: 10/01/2014	Solicitation Name: Total Management of Dispatch, Towing, and Impound Services for the Austin Police Department
Solicitation Number: RFP EAD0119REBID	Company Name: San Diego Police Department (formerly) City of San Diego Internal Operations Branch (currently)
Contact Name: Ronald Villa	Contact Phone Number: (619) 236-7795
Contact Email Address: rhvilla@sandiego.gov	

**Place an "X" under the answer that applies and complete the open ended questions below.**

1. Tell me about your company.

Comments: The City of San Diego is the 8<sup>th</sup> largest city in the US. It is a charter City with 10,000 employees and a population of 1.37 million.

2. Describe the work this vendor did for you/what types of service are you getting from the vendor? What was the project size?

Comments: AutoReturn provides management of towing dispatch and impound services for the City of San Diego primarily working with the San Diego Police Department. AutoReturn manages and coordinates these services with private tow operators and private impound yard operators. AutoReturn provides invoicing services for the City of San Diego to both the tow operators and impound operators and provides metrics to the City of San Diego to determine the performance level for all qualified operators. AutoReturn also manages the auction of forfeited vehicles to insure the City is gaining the biggest return after all fees have been recouped by the impound provider.

3. Why did you choose this vendor? What due diligence did you perform to select this vendor?

Comments: The City was looking for an impartial third party management provider that did not have any financial or business interest in a tow provider or an impound provider. Previously there was conflict of interest between management of the tow dispatch and the impound yard. Additionally, there was no data application that compiled tow data including response times, length of storage, fines and fees collected, or vehicle sales proceeds. AutoReturn has been able to provide fair and impartial dispatch related to the time and location of the vehicle and provide reports to gauge performance metrics.

4. Was the contract successfully completed? YES ☒ NO ☐

Please explain why or why not.

5. Was it completed on time and within budget? ☒ ☐

If not please describe. AutoReturn went above and beyond in their service to the City by providing uncompensated professional guidance in establish a new tow manual and guidelines. The City was involved in litigation that impacted the initial start date and AutoReturn accommodated all delays without any additional expenses.

6. Have you experienced any invoice issue from the vendor? ☐ ☒

If so please describe.

7. Were there changes to the original contract during the project? ☒ ☐

If so please explain. The contract was not amended but there were many adjustments throughout the RFP process for the Tow and Impound providers and AutoReturn made every effort to accommodate the needs of the tow and impound bidders as well as the City.

8. Would you choose this vendor again? ☒ ☐

Please explain why or why not. Yes and would probably expand the scope to include both tow and impound if possible.

Describe the following:

9. The vendor's work quality

Comments: All representatives of AutoReturn have remained professional throughout the agreement. They are responsive and focused on Customer Service.

10. The vendor's ability to meet the contract specifications and scope. Do you find the vendor to be knowledgeable?

Comments: AutoReturn provided many great suggestions and was very knowledgeable about the industry.

11. The vendor's responsiveness to your concern/emails/calls

Comments: Always responsive.

12. The vendor's overall performance

Comments: Exceptional.

13. Is there any other information you would like to share about this company?

Comments: AutoReturn serves as a partner for solving issues related to a very complicated industry. They truly demonstrate a public/private partnership.

Reference Check Completed by: Katie Greenwood





## REFERENCE CHECK WORKSHEET

Date of Reference: 9/23/2014	Solicitation Name: Total Management of Dispatch, Towing, and Impound Services for the Austin Police Department
Solicitation Number: RFP EAD0119REBID	Company Name: Baltimore County, Maryland – Police Department
Contact Name: Ofc. Keppler Don Brand-License and Permits	Contact Phone Number: (410) 887-7763 (410) 887-3353
Contact Email Address: mcrump@baltimorecountymd.gov	

**Place an “X” under the answer that applies and complete the open ended questions below.**

1. Tell me about your department.

Comments: Ofc. Keppler said, “We have 10 precincts and approximately 2000+ officers.” Don Brand said, “We license tow companies. The County administers the contract. We meet with AutoReturn if and when required.”

2. Describe the work this vendor did for you/what types of service are you getting from the vendor? What was the project size?

Comments: Ofc. Keppler said, “They manage the tow companies and do dispatching for the police department. We do anywhere from 15,000 to 20,000/year. For 2013, we towed 16,628 vehicles, the tow companies missed 48 calls, and they were late 497 calls. The average response time was 14 minutes and 40 seconds.”

Don Brand said, “They dispatch towers when the police department needs a tow. There are time requirements. They contracted to the towers that tow on behalf of AutoReturn.”

3. Why did you choose this vendor? What due diligence did you perform to select this vendor?

Comments: Ofc. Keppler said, “I wasn’t here during the RFP process so I can’t answer that question.”

Don Brand said, “We wanted a single entity to be the dispatcher. Police used to have to call different dispatchers. There were four or five applicants. We interviewed two or three. We finally selected AutoReturn. We had a questionnaire. They had to respond to an interview. There was a RFP.”

4. Was the contract successfully completed? YES ☒ NO ☐

Please explain why or why not. Ofc. Keppler said, "We are satisfied with their service."

Don Brand said, "We've had them for about five years. They perform well. We like them. Using 25 different contractors from the police department was very political."

5. Was it completed on time and within budget? ☐ ☐

If not please describe. Ofc. Keppler said, "I couldn't answer that because I don't deal with the contracts. Please call (410) 887-3353 and speak to Don Brand in License and Permits."

Don Brand said, "They get reimbursed based on a fee that is included in a fee schedule. They pick up the car. Take it to their lot. The owner picks up the car and pays a fee. The Towing Management Fee is \$24.00 effective 1/1/2014. That fee gets paid to AutoReturn."

6. Have you experienced any invoice issue from the vendor? ☐ ☒

If so please describe.

7. Were there changes to the original contract during the project? ☐ ☒

If so please explain. Don Brand said, "There have been no amendments to the original contract."

8. Would you choose this vendor again? ☒ ☐

Please explain why or why not. Don Brand said, "There were four or five applicants. We were really impressed with what they were doing in San Francisco. They had the best operational hardware and software and routine...by far better than any of the other applicants. The runner up just wasn't as refined as AutoReturn."

Describe the following:

9. The vendor's work quality

Comments: Ofc. Keppler said, Don Brand said, "They're accurate and on time with the information. They manage the tow companies really well. They are on top of things and make sure they perform up to our standards."

Don Brand said, "They do issue status reports from time to time of tows they have made. They keep statistics. They are very transparent. Just look at their website. We had issues about the fee schedule, but that's really not a problem with AutoReturn. The issues have arisen as to whether the fees are really proper which doesn't really affect AutoReturn. The equipment of the drivers (telephones, cell phones, etc.) has had issues. They reacted very quickly and cured the problem. They're very timely."

10. The vendor's ability to meet the contract specifications and scope. Do you find the vendor to be knowledgeable?

Comments: Don Brand said, "They have the ability. We wanted a dispatcher who would get someone there within a certain period of time. They discussed with us exceptions. They're a good manager. They have a local agent here. He's a retired police officer. I can call him or e-mail him in a moment's notice. E-mails are answered within three or four hours.

11. The vendor's responsiveness to your concern/emails/calls

Comments: Ofc. Keppler said, "They handle their work as it comes and immediately."

Don Brand said, "They are very meticulous, detailed, and thorough. Refer to my response above on the last question (#10). I think it's where they are when they get their e-mail. They are very responsive."

12. The vendor's overall performance

Comments: Ofc. Keppler said, "They meet guidelines. They work up to our standards."

Don Brand said, "Excellent."

13. Is there any other information you would like to share about this company?

Comments: Don Brand said, "I think I've said it all."

Reference Check Completed by: Katie Greenwood

## REFERENCE CHECK WORKSHEET

Date of Reference: 9/19/2014.	Solicitation Name: Total Management of Dispatch, Towing, and Impound Services for the Austin Police Department
Solicitation Number: RFP EAD0119REBID	Company Name: Kansas City, Missouri – Neighborhood & Housing
Contact Name: Nathan Pare	Contact Phone Number: (816) 513-0692
Contact Email Address: Nate.pare@kcmo.org	

**Place an “X” under the answer that applies and complete the open ended questions below.**

1. Tell me about your company.

Comments: AutoReturn manages our tow services. They do all impounds for the Police department, highway patrol, and other municipalities. AutoReturn dispatches through ARIES. We process the vehicles and go from there.

2. Describe the work this vendor did for you/what types of service are you getting from the vendor? What was the project size?

Comments: They give us a system called ARIES which is an impound database. Their dispatch will enter it into their system. They will send out a ping. The tow truck responds to the scene. They provide tracking and dispatch all the tows that Kansas City performs. We process about 15,000 vehicles per year.

3. Why did you choose this vendor? What due diligence did you perform to select this vendor?

Comments: Just because of what they were able to bring to the table. Prior to them coming on board, our response time was not too great. Tracking and how we processed the tows was 1980s. They were able to bring us into 2014. It changed the way we did business. They had the best opportunity for us to improve.

We always do a competitive bid process. They submitted a proposal. We did an interview process so to speak. We look for consistency. We did background checks, referrals, and past performances and things like that.

4. Was the contract successfully completed? YES ☒ NO ☐

Please explain why or why not. We are currently in a contract with them. They are meeting our expectations and needs. In fact, we are in the process of renewing for another year.

5. Was it completed on time and within budget? ☒ ☐

If not please describe.

6. Have you experienced any invoice issues from the vendor? ☐ ☐

If so please describe. That's a very vague issue. They do 15,000 tows a year for us. With that being said, there are little issues here and there of course, but AutoReturn has always resolved them without any concerns.

7. Were there changes to the original contract during the project? ☒ ☐

If so please explain. We changed the expectations that we had for them. What we started to require of them was when they were towing the vehicle was to take pictures of the vehicle at the scene and before being processed for evidence. They have done that. We lowered the prices of what we paid the vendors per tow. For instances where we cancelled a tow, we added a cancellation fee payable to the vendors so that it was fair and equitable across the board. We added additional requirements to make sure we were providing the best quality service to the citizens.

8. Would you choose this vendor again? ☒ ☐

Please explain why or why not. We have a current contract with them.

Describe the following:

9. The vendor's work quality

Comments: It's very good. We hire them to provide dispatching. They in turn hire vendors to do the tows. They are very responsive. They follow through on the technical side and also with regards to the auction. They are very supportive. They answer our phone calls. They respond to e-mails. They meet with Council and the Mayor. They are here for key meetings. The CEO has personally come out to those things. They are very responsible and responsive. We couldn't ask them to do anything else.

10. The vendor's ability to meet the contract specifications and scope. Do you find the vendor to be knowledgeable?

Comments: Yes.

11. The vendor's responsiveness to your concern/emails/calls

Comments: Refer to the response for #9. They take care of everything daily.

12. The vendor's overall performance

Comments: It's excellent. They've met every expectation and exceeded it some respect.

13. Is there any other information you would like to share about this company?

Comments: They've changed the way we do business for the better. They have challenged us to make changes within our operation. We definitely provide a better product to the citizens of Kansas City since they've been on board.

Reference Check Completed by: Katie Greenwood





September 12, 2014

TEGSCO, LLC  
dba AutoReturn  
John Wicker  
450 7<sup>th</sup> Street  
San Francisco, CA 94103  
[jwicker@autoreturn.com](mailto:jwicker@autoreturn.com)

Subject: Addition to Authorized Contact Person for Solicitation RFP EAD0119REBID, Total Management of Dispatch, Towing, and Impound Services for the Austin Police Department.

Dear Mr. Wicker:

To facilitate the clarification discussions, Monica McClure is hereby added as an Authorized Contact for the above-referenced solicitation. She will be contacting you for additional information.

Monica McClure  
Contract Administrator  
[Monica.McClure@austintexas.gov](mailto:Monica.McClure@austintexas.gov)  
(512) 974-1714

The No-Contact period for this solicitation remains in effect until any of these occur:

- a) a contract is awarded and executed,
- b) the City withdraws the solicitation,
- c) the City rejects all responses with a stated intention to reissue the same or similar solicitation,
- d) 90 days after the date the City withdraws the solicitation or all responses are rejected without the reissue of a solicitation.

Sincerely,

Erin D'Vincent  
Senior Buyer Specialist  
City of Austin  
Purchasing Office





February 11, 2015

TEGSCO, LLC  
dba AutoReturn  
John Wicker  
450 7<sup>th</sup> Street  
San Francisco, CA 94103  
[jwicker@autoreturn.com](mailto:jwicker@autoreturn.com)

Subject: Addition to Authorized Contact Person for Solicitation RFP EAD0119REBID, Total Management of Dispatch, Towing, and Impound Services for the Austin Police Department.

Dear Mr. Wicker:

Teresa Reddy has been added as a temporary authorized contact person from February 13<sup>th</sup> through February 24<sup>th</sup>. I will be out of the office so please direct any questions that may occur during this timeframe directly to her. She can be reached at 512-972-4138 or [Teresa.Reddy@austintexas.gov](mailto:Teresa.Reddy@austintexas.gov).

The No-Contact period for this solicitation remains in effect until a) a contract is awarded, negotiated and executed, or b) the City withdraws the solicitation, or c) the City rejects all responses with a stated intention to reissue the same or similar solicitation, or d) 90 days after the date the City withdraws the solicitation or all responses are rejected without the reissue of a solicitation.

Please let me know if you have any questions at 512-972-4017.

Sincerely,

Erin D'Vincent  
Senior Buyer Specialist  
City of Austin  
Purchasing Office